IN THE UNITED STATES DISTRICT COURTS
SOUTHERN DISTRICT OF NEW YORK

Sandra Sailsman Plaintiff

v.

CACH, LLC

Daniels Norelli Scully & Cecere, P.C. f/k/a

Daniels & Norelli, P.C.

George H. Norelli

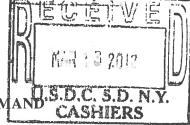
Defendants

S Case No. 2 CV

1852

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PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEM

Plaintiff, SANDRA SAILSMAN brings suit against Defendants for their violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., (the "FDCPA"), and in support would show as follows.

A. JURISDICTION AND VENUE

- 1. The Court has federal question jurisdiction over the lawsuit because the action arises under the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., (FDCPA). Jurisdiction of the Court arises under 28 U.S.C. § 1331 in that this dispute involves predominant issues of federal law, the FDCPA. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
- 2. Venue in this District is proper because all or a substantial part of the events or omissions giving rise to the claims occurred in Bronx County, New York.
- 3. Plaintiff is an individual who resides in Bronx County, New York.
- 4. Defendant CACH, LLC is a limited liability company organized and existing under the laws of the State of Colorado. Said Defendant engages in business in New York, and this suit arose out of said Defendant's business in New York. CACH, LLC, may be served by and through its New

York registered agent CT Corporation System, 111 Eighth Avenue, New York, New York, 10011.

- 5. Defendant DANIELS NORELLI SCULLY & CECERE, P.C. is a professional corporation organized and existing under the laws of the State of New York, with its principal place of business at One Old Country Road, Suite LL5, Carle Place, New York 11514. It may be served at its principal executive office at One Old Country Road, Suite LL5, Carle Place, New York 11514.
- 6. Defendant GEORGE H. NORELLI is an individual who, on information and belief, is a resident of the State of New York. Mr. Norelli is a principal owner and operator of the Daniels Norelli Scully & Cecere, P.C. He may be served at his place of business at Daniels Norelli Scully & Cecere, P.C., One Old Country Road, Suite LL5, Carle Place, New York 11514, or wherever he may be found.

B. STATEMENT OF FACTS

- 7. Defendant DANIELS NORELLI SCULLY & CECERE, P.C. (the "PC" or "Daniels & Norelli") is a debt collection law firm. The PC is a debt collector because it sends thousands of collection letters and files thousands of collection lawsuits as attorneys for putative creditors and debt buyers seeking to collect alleged consumer debts.
- 8. Defendants George H. Norelli ("Norelli"), an attorney, is a principal owner and operator of the PC.
- 9. Defendant CACH, LLC ("CACH") purchases hundreds of thousands of charged off consumer accounts and attempts to collect on them by sending thousands of collection letters and filing thousands of collections lawsuits, directly or through others. CACH is also a debt collector.

- 10. On or about January 7, 2011, CACH, through its law firm and agent PC, filed a state court collections lawsuit in Bronx County Civil Court, <u>CACH</u>, <u>LLC v. Sandra Sailsman</u>, No. CV-002235-11/BX ("the collection lawsuit"). In its verified complaint CACH averred that "there is presently an unpaid balance due and owing . . . the sum of \$1,916.47 with interest from 7/21/2009, . . . together with reasonable attorney's fees." The verification was signed by Joshua Bronstein, Esq., an attorney with the PC.
- 11. Defendants demanded in the summons judgment "for the sum of \$1,916.47 with interest thereon from 7/21/2009, together with costs of this action." The same demand was made in the "WHEREFORE" clause of the verified complaint. See Exhibit A. The summons and the verified complaint each purport to be signed on 12/6/2010. Post-default interest is limited to 9% under New York state law. As a simple matter of math, \$1,916.47 with 9% interest from 7/21/2009 to yields a total amount due of \$2,208.04 on 12/6/2010. Costs and disbursements in a New York Civil case is typically about \$125.00.²
- 12. Defendants never served Ms. Sailsman.
- 13. Defendants mailed a copy of the summons and complaint to Ms. Sailsman with a cover letter dated February 23, 2011. The cover letter stated that the "amount complained" was \$1,916.47. See Exhibit B. The cover letter made no mention of interest, costs and

¹ Oddly, while the demand for judgment did not seek an award of attorney's fees, item 4 of the complaint stated "there is presently an unpaid balance due and owing to the Plaintiff in the sum of \$1,916.47 with interest from 7/21/2009 and said defendant(s) is now in default of payment under the terms of said agreement, together with reasonable attorney's fees." (emphasis added).

² Costs and disbursements for civil cases are \$20.00 for costs by statute, \$45.00 for the index number fee, \$40.00 for a prospective enforcement fee, and some amount for service of process fee, often about \$20.00.

disbursements, or attorney's fees.³

- 14. On or about March 4, 2011, Ms. Sailsman filed a pro se answer. With the answer she filed and served a letter itemizing the payments she made on the account and why this demonstrated that the account had already been paid in full. See Exhibit C.
- 15. The collection lawsuit was set for a pretrial hearing on April 12, 2011.
- 16. On or about April 2, 2011, Ms. Sailsman received a collection letter dated March 15, 2011, which had a handwritten notation that it was the "2nd mailing." See Exhibit D.
- 17. In fact the March 15, 2011 letter was the first mailing of the letter, despite the handwritten notation to the contrary.
- 18. The March 15, 2011 letter stated that \$4,039.15 was the "Current Balance Due on or before 3/30/2011," and purported to give an accounting of prior payments. The letter claimed that the "previous balance" was \$16,039.15.
- 19. The amount claimed to be due in the March 15, 2011 collection letter was \$2,122.68 greater than the \$1,916.47 Defendants claimed was the "amount complained of" in its cover letter of February 23, 2011.
- 20. The amount claimed to be due in the March 15, 2011 collection letter was \$1,831.11 greater than the principal and interest the summons claimed to be due.
- 21. Defendants used the March 15, 2011 letter to attempt to dupe Ms. Sailsman to signing

³ Communications more than one year from the filing of this complaint which may be time barred under the one year FDCPA statute of limitations are still relevant because they demonstrate how communications made within statute of limitations are misleading.

⁴ Oddly, in three places the letter states that the amount due is \$4,039.15, but one place it states the balance due is \$4,039.00.

that she "agreed" that this was the correct amount due and that she would pay that full amount by 3/30/2011. Specifically, the letter stated, that, by signing the agreement to pay, "you will also acknowledge your liability for this obligation and the accuracy of the information contained in this letter."

- 22. The March 15, 2011 letter purported to come from and be signed personally by a named partner of the PC, George H. Norelli, Esq. ("Norelli").
- 23. By contending that Mr. Norelli signed the letter personally, Defendants were representing to Ms. Sailsman that Mr. Norelli had done an individualized assessment of the facts and circumstances of the claims against Ms. Sailsman.
- 24. If Mr. Norelli did not in fact review the facts and circumstances around Ms. Sailsman putative account, Defendants were misrepresenting the level of attorney review in the collection letter.
- 25. Alternatively, if Mr. Norelli did review the specifics of Ms. Sailsman's putative account, then Defendants were making a knowing misrepresentation of the amount due, in relation to the amount Defendants claimed to be due in the summons and complaint, the February 23, 2012 cover letter, and, as we shall see, in subsequent verified court filings.
- 26. Ms. Sailsman was stunned and confused by Defendants' (mis)representations of the claimed to be due. Ms. Sailsman felt overwhelmed by the fact that this law firm that just sued her for \$1,916.47 was stating now by letter the "previous balance" was \$16,039.15, and that she currently owed \$4,039.15.
- 27. On or about April 3, 2011, Ms. Sailsman spoke with a debt collector from the PC. Ms.

Sailsman questioned the collector about the letter dated March 15, 2011, because she was confused about the breakdown of charges, and also by the notation that this letter was the second mailing as she never received the first.

- 28. The debt collector did not explain how Daniels & Norelli arrived at the alleged balance due but argued with Ms. Sailsman and spoke to her in a very condescending and argumentative manner. Ms. Sailsman, feeling upset and very frustrated, stated that any further information that Daniels & Norelli would like to impart to her regarding this debt should be in writing, to which the debt collector replied her office "was not equipped to do that."
- 29. Ms. Sailsman followed up about the conversation with the debt collector by handwritten letter dated April 3, 2011, addressed to the PC explaining that she paid the creditor at least \$14,645.00 and that she was "informed" previously that the total debt was \$13,916.47. See Exhibit E. Ms. Sailsman requested that Defendants investigate this discrepancy with GE Money Bank, and that any further communications shall be in writing sent to her home address.
- 30. Shortly thereafter, Ms. Sailsman received, again, the same March 15, 2011 letter from the PC with a handwritten adhesive notes affixed to the front of the letter. This note acknowledged additional prior payments not reflected in the letter itself, but still contended that the amount due was \$4,039.15.
- 31. On April 14, 2011, during the first pretrial conference, Civil Court Judge Mitchell J. Danzinger ordered CACH, through its counsel, to serve discovery materials to Ms. Sailsman within 45 days.
- 32. CACH, through its counsel, served Ms. Sailsman with its first set of interrogatories. The

interrogatories had a certificate of service of April 20, 2011. The cover letter to the interrogatories, also dated April 20, 2011, stated, "Total Amount Sued for: 1,916.47." See Exhibit F. This stated "total amount" is entirely inconsistent with the total amount claimed to be due in the summons, the verified letter, the letter of February 23, 2011, and the letter of March 15, 2011.

- 33. Although the interrogatory demands contained a certificate of service of April 20, 2011, the postage stamp on the envelope indicated it was not mailed until April 27, 2011. Ms. Sailsman had only 20 days from the date of service to answer the interrogatories. See Exhibit G. The pattern and practice of Defendants is to move to strike a pro se consumer's answer to the complaint and move to enter judgment against the consumer if the consumer does not timely answer discovery demands. Therefore, on information and belief, CACH, through the PC, intentionally backdated the certificate of service date in the interrogatories with the specific intent to confuse Ms. Sailsman and to provide a pretext for CACH to strike Ms. Sailsman's answer and to move for default judgment against her.
- 34. Ms. Sailsman responded to the discovery demands of CACH and the PC by producing bank statements showing proof of payment totaling \$14,465.00 on the alleged account.
- 35. On or about May 6, 2011, Ms. Sailsman received the discovery responses from CACH and its counsel, and it partially complied with discovery by providing a few account statements, an alleged copy of an affidavit of sale, and a boilerplate card member agreement dated 2006, a year before the date in which Ms. Sailsman opened a GE Money Bank/Care Credit account.
- 36. On or about June 14, 2011, CACH filed a motion for summary judgment seeking

\$1,916.47, "together with statutory interest from" July 21, 2009, and statutory costs of the civil court action. See Exhibit H.

- 37. In support of its motion for summary judgment, CACH provided an affidavit of Mr. Tom Vigil dated May 20, 2011, the "authorized agent and custodian of records" for CACH. Mr. Vigil avers in his affidavit that, "As of the date hereof [May 20, 2011], there is due and owing . . . the amount of \$1,916.47 together with interest at the rate of nine percent (9%) from 7/21/2009 and costs of this action." In support of his affidavit, Mr. Vigil attached assorted documents including a putative 2006 card member agreement, and six putative credit card statements from February 2009 through July 2009.
- 38. On or about June 28, 2011, Ms. Sailsman provided a pro se response to CACH's motion for summary judgment and served it on its counsel. In her opposition, she questioned the authenticity of the bill of sale, raised the issue of hearsay because all documentation relied on and statements made by Mr. Vigil in his affidavit were based on inadmissible hearsay. Ms. Sailsman further challenged whether CACH met its burden of production stating that it did not provide prima facie evidence to support its claims for breach of contract and account stated, partly because the fees enumerated in the card member agreement provided by CACH contradicted the fees actually charged in the statements provided. Lastly, she maintained that genuine issues of fact remain as to the balance CACH sought to recover from Ms. Sailsman.
- 39. Ms. Sailsman was confused at to the amount that CACH claimed she owed as she received from Defendants numerous conflicting statements as to remaining amount allegedly owed on the GE Money Bank credit card.

- 40. On or about July 18, 2011, the PC, on behalf of CACH, replied to Ms. Sailsman's opposition to summary judgment reiterating the points it made in its initial motion and alleging no issue of fact for trial.
- 41. On July 22, 2011, Civil Court Lizbeth Gonzalez heard CACH's motion. Judge Gonzalez indicated that she was going to deny the motion, so CACH withdrew the motion to avoid an adverse ruling.
- 42. In an especially egregious act, CACH, through the PC, slipped to the judge's law clerk and attempted to have signed an order granting on default its motion for summary judgment. See Exhibit I. The clerk went so far as to stamp Judge Gonzalez's name on the proposed order, however, after Judge Gonzalez indicated she would deny the motion CACH withdrew the motion to avoid an adverse ruling.
- 43. The court set trial for September 22, 2011.
- 44. Because it knew it would not and could not prove its claims at trial, CACH filed a second motion, despite knowing it would have lost its first summary judgment motion.
- 45. On August 2, 2011, CACH filed a second motion for summary judgment because CACH knew it could not prove its claims in the previously set trial. This required Ms. Sailsman again to file a pro se opposition, and again to miss work to go to court so she could attend the hearing on the second motion for summary judgment. See Exhibit J.
- 46. On August 30, 2011 Judge Ben R. Barbato denied CACH's motion for summary judgment. See Exhibit K.
- 47. On September 22, 2011, the court called the case for trial. CACH put forth no evidence

that Ms. Sailsman owed the putative debt. Judge Danzinger ordered the collection lawsuit discontinued with prejudice.

- 48. Ms. Sailsman, like many New Yorkers in these difficult financial times, lives paycheck-to-paycheck. Ms. Sailsman certainly could not afford to hire an attorney to defend herself in the collection lawsuit. Defendants acted with the specific purpose of misleading Ms. Sailsman in an effort to compel her to pay more than the amount that was actually owed on the account.
- Ms. Sailsman wanted to pay the amount she actually owed. She had gone so far as to liquidate \$11,000 from her retirement savings to pay down the debt. She paid an additional \$1,000 towards the debt from her tax refund. However, Ms. Sailsman did not wish to pay an amount she did not owe. By her accounting, the debt should have been either paid off in full. Ms. Sailsman's desire to actually resolve the debt for the correct amount owed was one reason why Defendants' misrepresentations and inconsistent representations of the amount due caused her so much confusion and distress.
- 50. Ms. Sailsman was confused, distressed, and overwhelmed when Defendants told her orally and in the March 15, 2011 letters that she owed \$4,039.15, when her own records showed that the debt had been paid. This confusion and distress was magnified by series of contradictory (and therefore deceptive) assertions made by Defendants. The letter of April 20, 2011, stated that the "Total Amount Sued for" was 1,916.47." (Emphasis added). Yet in their motions for summary judgment Defendants stated she not only owed 1,916.47, but also interest at 9% from July 21, 2009 to present, plus costs.

- Ms. Sailsman just wanted to pay the amount actually owed and be done with it. Ms. Sailsman felt overwhelmed that Defendants were pressuring her to sign the letters dated March 15, 2011, stating that she "agreed" that she really owed \$4,039.15. The letter carried even more weight because it was personally signed by the lawyer that was the head of the law firm. Ms. Sailsman felt powerless and feared what Defendants might do or say in court and how she would defend herself against them, especially since they were also telling her that they really could get more than \$4,000 against her. Certainly, Ms. Sailsman's fears were borne out when CACH, through the PC, slipped a proposed order to the court's law clerk granting summary judgment on default when in fact CACH withdrew the motion after the court indicated it would deny the motion.
- Ms. Sailsman felt the stress, fear, and anxiety mounting each day after she received the letters and calls from the PC, and she suffered these feelings almost every day from that point until the case was dismissed on September 22, 2011. This mounting anxiety made it difficult to sleep and caused headaches. Ms. Sailsman also incurred expenses, including postage and copies, seeking to prevent Defendants from obtaining the more than \$4,000 to which they said they were entitled.

COUNT # 1: Violations of the federal Fair Debt Collection Practices Act.

53. Plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

⁵ This is not to suggest that Ms. Sailsman actually owed this debt to <u>CACH</u>, the debt collector who brought the collection lawsuit. Ms. Sailsman only knew that she had \$12,000 in dental work performed, and she paid for that dental work on a GE Money Bank/Care Credit account. CACH never proved in court – either to Ms. Sailsman or to the judges who considered CACH's two summary judgment motions – that CACH had title to the debt or had fully accounted for the amount they sought collect.

- 54. The purpose of the FDCPA is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). See also Hamilton v. United Healthcare of La., Inc., 310 F.3d 385, 392 (5th Cir. 2002) ("Congress, through the FDCPA, has legislatively expressed a strong public policy disfavoring dishonest, abusive, and unfair consumer debt collection practices, and clearly intended the FDCPA to have a broad remedial scope").
- 55. Congress designed the FDCPA to be enforced primarily through private parties such as plaintiff acting as "private attorneys general." See S. Rep. No. 382, 95th Con., 1st Sess. 5 (Aug. 2, 1977), ("The committee views this legislation as primarily self-enforcing; consumers who have been subject to debt collection abuses will be enforcing compliance"); and Jacobson v. Healthcare Fin. Servs., 516 F.3d 85, 91 (2d Cir. 2008) ("In this way, the FDCPA enlists the efforts of sophisticated consumers like [plaintiff] as 'private attorneys general' to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.")
- 56. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) because she was alleged to owe a debt.
- 57. The obligation alleged by Defendants to be owed by Plaintiff is a "debt" as defined by 15 U.S.C. § 1692a(5) because the putative credit card debt was incurred primarily for family, personal or household purposes.

- 58. Defendants are each a "debt collector" as defined in 15 U.S.C. § 1692a(6).
- 59. The PC is a debt collector because it sends thousands of collection letters and files thousands of collection lawsuits as attorneys for creditors and debt buyers seeking to collect alleged consumer debts. Therefore, the PC regularly attempts to collect debts alleged to be to another, and that is its primary purpose.
- 60. Norelli is a debt collector because he regularly collects debts through the PC. Norelli is principal and partner of PC. Norelli purportedly signed the letters dated March 15, 2011, stating that Ms. Sailsman owed over \$4,000. On information and belief, Norelli made the decisions to take the actions that form the basis of this complaint. On information and belief, Norelli exercised control over the operation and management of the collection activities of the PC.
- 61. CACH is a debt collector because it purchases defaulted consumer accounts and attempts to collect on them by sending thousands of collection letters and filing thousands of collections lawsuits, directly and through others. Therefore, CACH regularly attempts to collect post-default consumer debts, directly or indirectly, and that is its primary purpose.
- 62. The actions of Defendants enumerated in the above statement of facts constitute an attempt to collect a debt or were taken in connection with an attempt to collect a debt within the meaning of the FDCPA.
- 63. Defendants violated the following sections of the FDCPA: 15 U.S.C. §§ 1692d, 1692e, and 1692f. By way of example and not limitation Defendants violated the FDCPA by taking the following actions in an attempt to collect a debt or in connection with an attempt to collect a debt: engaging in conduct the natural consequence of which is to harass, oppress or abuse any

person; using false, deceptive or misleading representations or means; misrepresenting the character, amount or legal status of the debt; misrepresenting the services rendered or compensation which may be received; threatening to take and actually taking an action prohibited by law; communicating or threatening to communicate to any person false credit information; using any false representations or deceptive means; using unfair or unconscionable means; and collecting any amount that is not expressly permitted by law or contract.

64. A prevailing Plaintiff in an FDCPA action is entitled to actual damages, additional statutory damages of up to \$1,000.00, and mandatory attorney's fees and costs, and these are so sought.

C. JURY DEMAND.

65. Plaintiff demands a trial by jury.

D. PRAYER

- 66. For these reasons, Plaintiff asks for judgment against Defendants for the following:
 - i. The above referenced relief requested;
 - ii. Statutory damages of up to \$1,000.00 pursuant to 15 U.S.C. § 1692k;
 - iii. Actual damages within the jurisdictional limits of the court;
 - iv. Attorney fees and costs;
 - v. Prejudgment and post-judgment interest as allowed by law;
 - vi. A declaration that Defendants violated the FDCPA as alleged in the complaint;

vii. General relief;

viii. All other relief, in law and in equity, both special and general, to which Plaintiff may be justly entitled.

Dated: New York, NY March 12, 2012

Respectfully submitted,

By: _____Ahmad Keshavarz

ATTORNEY FOR PLAINTIFF

The Law Office of Ahmad Keshavarz

16 Court St., 26th Floor Brooklyn, NY 11241-1026 Phone: (718) 522-7900

Fax: (877) 496-7809

Email: ahmad@NewYorkConsumerAttorney.com

YISROEL SCHULMAN, ESQ. NEW YORK LEGAL ASSISTANCE GROUP

Randal Jeffrey, Of Counsel 7 Hanover Square, 18th Floor New York, New York 10004

Phone: (212) 613-5053 Email: RJeffrey@nylag.org

Shanna Tallarico, of Counsel (ST0277)

ATTORNEY FOR PLAINTIFF

7 Hanover Square, 18th Floor

New York, New York 10004 Phone: (212) 613-5000 ext. 5155

Email: STallarico@nylag.org

EXHIBIT A

CONSUMER CREDIT TRANSACTION IMPORTANT!! YOU ARE BEING SUED!! THIS IS A COURT PAPER - A SUMMONS

DON'T THROW IT AWAY!! TALK TO A LAWYER RIGHT AWAY!! PART OF YOUR PAY CAN BE TAKEN FROM YOU (GARNISHEED). IF YOU DO NOT BRING THIS TO COURT, OR SEE A LAWYER, YOUR PROPERTY CAN BE TAKEN AND YOUR CREDIT RATING CAN BE HURT!! YOU MAY HAVE TO PAY OTHER COSTS TOO!! IF YOU CAN'T PAY FOR YOUR OWN LAWYER BRING THESE PAPERS TO THIS COURT RIGHT AWAY. THE CLERK (PERSONAL APPEARANCE) WILL HELP YOU!!

| CALLEY COVERED OF THE CHEVY OF A | 0 | 02235-11 | | |
|---|---------------|---|--------|--|
| CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX | | Summons | 117/11 | |
| CACH, LLC -against- | Plaintiff(s), | Plaintiff's Address: 4340 S. MONACO, 2 nd Flr. DENVER, CO 80237 The basis of venue designated is: Defendant lives in BRONX County or Defendant(s) transaction took place in BRONX County | | |
| SANDRA SAILSMAN | Defendant(s), | | | |
| X | | | | |

YOU ARE HEREBY SUMMONED to appear in the CIVIL COURT OF THE CITY OF NEW YORK, County of BRONX at the office of the Court Clerk at CIVIL COURT OF THE CITY OF NEW YORK, 851 GRAND CONCOURSE, BRONX, NY 10451, in the County of BRONX, City and State of New York, within the time provided by the laws as noted below and to file your answer to the annexed complaint with the Clerk: upon your failure to answer, judgment will be taken against you for the sum of \$1,916.47 with interest thereon from 7/21/2009, together with the costs of this action.

Dated: 12/6/10

Defendant(s) Address:

To the above named defendant(s)

3015 Perry Ave 3g

Bronx NY 10458

Note: The law provides that (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within 20 days after such service; or (b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed 30 days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

By: Joshua Bronstein, Esq.

DANIELS & NORELLI, P.C., Attorneys for Plaintiff, 1 Old Country Rd, Suite LL5, Carle Place, NY 11514,

Tel# 866-275/4734. 120000382643-261-14

WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

| CIVIL COURT OF THE CITY O COUNTY OF BRONX | | Verified Complaint |
|---|---------------|--------------------|
| CACH, LLC | Plaintiff(s), | |
| -against- | | |
| SANDRA SAILSMAN | Defendant(s), | |
| | X | |
| | | C-11 |

Plaintiff, by the undersigned attorneys, complaining of the Defendant(s), alleges as follows, upon information and belief:

- 1. Plaintiff is a Colorado limited liability company, duly licensed with the City of New York Department of Consumer Affairs license number 1253378. The Plaintiff is the assignee and/or purchaser of all rights and privileges of the credit issuer (to wit, GE MONEY BANK/CARE CREDIT) which issued a credit card to the Defendant(s).
- 2. That the Defendant(s) resides in the county in which this action is brought; or that the Defendant(s) transacted business within the county in which this action is brought in person or through his/her agent and that the instant cause of action arose out of said transaction.

AS AND FOR A FIRST CAUSE OF ACTION

- 3. At the Defendant(s) request, the original creditor issued a **CREDIT CARD ACCOUNT NOW KNOWN AND NUMBERED AS:** 6019183001652676, to the Defendant(s) under a retail installment credit agreement by which the Defendant(s) agreed to pay for merchandise, loans and installments, and in the event of default, to pay reasonable attorney's fees.
- 4. The Defendant(s) or authorized members of the family, received cash, merchandise and/or credit on the credit card account and there is presently an unpaid balance due and owing to the Plaintiff in the sum of \$1,916.47 with interest from 7/21/2009 and said defendant(s) is now in default of payment under the terms of said agreement, together with reasonable attorney's fees.
 - 5. Payment of the defaulted balance has been duly demanded and remains unpaid.
 - 6. A copy of the credit card agreement was mailed or delivered to the account holder.
- 7. That there is now due Plaintiff from Defendant(s) the amount of \$1916.47 no part of which has been paid, although due & duly demanded.

AS AND FOR A SECOND CAUSE OF ACTION

- 8. Plaintiff repeats and re-alleges all of the above allegations.
- 9. GE MONEY BANK/CARE CREDIT, assignor to Plaintiff herein, did, prior to the transfer of the title, rights and privileges of said account, furnish and deliver to Defendant(s) on or about 7/21/2009, a full, just and true statement of the unpaid balance due from Defendant(s) by use of said account. That the Defendant(s) received, accepted and retained the accounting without rejection or objection being made.
- 10. By reason thereof, an account was taken and stated between Plaintiff and Defendant(s) which showed the balance on said account due and owing to plaintiff as \$1,916.47 which remains unpaid.

WHEREFORE, Plaintiff demands judgment against Defendant(s) for the sum of \$1,916.47 with interest from 7/21/2009 together with costs and disbursements of this action.

Dated: 12/6/10

DANIELS & NORELLI, P.C. Attorneys for Plaintiff 1 Old Country Rd, Suite LL5 Carle Place, NY 11514 (866)-276-4734

State of New York}
County of Nassau s.s:

I, the undersigned, an attorney-at-law, admitted to practice in the Courts of the State of New York, state that I am an attorney in the firm of Daniels & Norelli, P.C., the attorney of record for the Plaintiff in the within action; I have read the foregoing complaint and know the contents to be true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are the records of the Plaintiff, which the Plaintiff has provided to me. I affirm that the foregoing statements are true under the penalties of perjury.

Affiant further says that the reason this verification is made by affiant and not by the said Plaintiff, is because Plaintiff is not located within the County in which the attorney maintains his office.

By. Joshua Bronstein, Esq.

WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

EXHIBIT B

DANIELS & NORELLI. P.C. Attorneys at Law

rired G. Daniels* George H. Norelli James P. Scully* Isaac N. Tuchman Meredith E. Unger

1 Old Country Road Suite LL5 Carle Place, NY 11514 (866) 276-4734 (510) 338-7520 15101338-1003- Fux

Member of the NY & NJ. Ha.

Joshua R. Bronstein Ira. R. Sitzer

February 23, 2011

PERSONAL & CONFIDENTIAL SANDRA SAILSMAN 3015 Perry Ave 3g Bronx, NY 10458

RE: CACH, LLC as assignee of GE MONEY BANK CARE CREDIT -1 - SANDRA SAILSMAN

Original Creditor: GE MONEY BANK

Index # 02235/11

Amount Complained: \$1,916.47 Account # 6019183001652676 Our Account #: 120000382643

Dear SANDRA SAILSMAN.

Lunderstand that you were recently served with a copy of the within Summons & Complaint in regards to an unpaid GE MONEY BANK/CARE CREDIT credit card account.

Please be advised, you may be able to avoid further proceedings by contacting this office on or before 3/9/2011. Failure to answer the complaint against you or amicably resolve to this matter may result in the entry of a default judgment against you.

Lencourage you to contact this office so that we may further discuss available options.

Please govern vourself accordingly.

Very truly yours. Daniels & Norelli, P.C.

We are attempting to collect a debt and any information obtained will be used for that purpose.

EXHIBIT C

| | vil Court of the City of New York unty of Bronx | | No: CV-002235-11/BX | | | |
|------------|--|---|------------------------------|------|--|--|
| CAC | CH, LLC | | R IN PERSON | | | |
| | -against- NDRA SAILSMAN | | EDIT TRANSACTION | | | |
| D | Defendant, SANDRA SAILSMAN, at 3015 PERRY AVE 3G, E | Bronx, NY 10458- , ansv | vers the Complaint as | | | |
| | ted: 03/04/2011 | | A | | | |
| 1 | Check all that apply) General Denial: I deny the allegations in the complai | $\int \int $ | | | | |
| | SERVICE | (9) | \sim | | | |
| 2 | I did not receive a copy of the summons and complain | int | 1 | | | |
| 3 | I received the Summons and Complaint, but service | | red by law. | | | |
| | DEFENSES | | | | | |
| 4 | XX I do not owe this debt | agent and Ad Market . A SHALL SEE . | 3 1 18 18 6 6 6 | | | |
| 5 | I did not incur this debt. I am the victim of identity the | heft or mistaken identity | • | | | |
| 6 | XX I have paid all or part of the alleged debt. | | | | | |
| 7 | I dispute the amount of the debt. | | | | | |
| 8 | The state of the s | | | | | |
| 9 | The NYC Department of Consumer Affairs shows no reco | | | | | |
| 10 | | | | | | |
| 11 | Statute of Limitations (the time has passed to sue or | this debt: more than six | (years.) | | | |
| 12 | | | | | | |
| 13 | The collateral (property) was not sold at a commerci | ally reasonable price. | • | | | |
| 14 | | | iginal debt.) | | | |
| 15 | Violation of the duty of good faith and fair dealing. | | | | | |
| 16 | Unconscionability (the contract is unfair.) | | | | | |
| 17 | Laches (plaintiff has excessively delayed in bringing | this lawsuit to my disac | ivantage.) | ě. | | |
| 18 | Defendant is in the military. | 1 (1 | | | | |
| 19 | XX Other: DEBT PAID IN FULL | St letter | | | | |
| | OTHER | | | | | |
| 20 | | , which is exemp | t from collection. | | | |
| 100 | COUNTERCLAIM | | | | | |
| 21 | Counterclaim(s): \$ Reason: | | | 8 | | |
| Th | nis case is scheduled to appear on the calendar as follow | s:April 12, 2011 in Part 11 | C - Non-Jury - Self-Represen | ited | | |
| | onsumer Debt, om 504 at 10:30 AM Both sides notified: | | | | | |
| Koo To: | | • | | | | |
| | Daniels & Norelli, PC | ID - DMV | FILEU | | | |
| | 1 Old Country Road, Suite LL5 | 11 e | CLERK'S OFFICE | | | |
| | Carle Place, NY 11514- | | MAR 0 4 2011 | 1 | | |

CIVIL COURT BRONX COUNTY TO: Civil Court of New York - County of Bronx 851 Grand Concourse Bronx NY 10451

FROM: Sandra L Sailsman 3015 Perry Avenue 3G Bronx, NY 10458

RE: Index (libro) No 02335-11,

CACH, LLC vs. Sandra L Sailsman CACH Account number: 12000382643

RF.

G E Money Credit Care Account Number 6019 1830 0165 2676

Credit Limit \$12000

Amount Complained \$1916.47

I, Sandra L. Sailsman, respectfully submit that these are the monies paid to Care Credit /G. E. Money Bank for the year 2008, 2099 and 2010. I believe that I have fully satisfied any outstanding debt and owe nothing further.

| February 19, 2008 March 17, 2008 March 19, 2008 April 16, 2008 | \$110 140 140 272 | May 19, 2008 June 18, 2008 July 21, 2008 August 21, 2008 | \$274 274 275 275 | September 16, 2008 October 20, 2008 November 17,2008 | \$275 275 335 |
|---|----------------------------|--|----------------------------|--|---------------------|
| Sub total | \$ 662 | | \$1098 | | \$885 |

Total Paid in 2008 \$2645

| November 10, 2009 | April 30, 2010 |
|-------------------|----------------|
| \$11.,000.00 | \$ 1,000.00 |

Grand Total Paid \$14,645

Attached are copies of my bank statements for all of the above with the exception of my December 2008 statement which I cannot locate, and therefore did not include an amount for this month.

Sandra L Sailsman

EXHIBIT D

DANIELS & NORELLI, P.C.

Attorneys at Law

Fred G. Daniels* George H. Norelli James P. Scully* Isaac N. Tuchman

Meredith E. Unger Joshua R. Bronstein Ira R. Sitzer

Member of the N.Y. & N.J. Bar*

SANDRA SAILSMAN 3015 Perry Ave 3g

Bronx, NY 10458

In whilms

One Old Country Rd
Suite LL5
Carle Place, NY 11514

(866)276-4734 (516) 394-8780 Fax (516) 338-7954

March 15, 2011

RE: CACH, LLC as assignee of GE MONEY BANK/CARE CREDIT v. SANDRA SAILSMAN

Original Creditor: GE MONEY BANK/CARE CREDIT

Original Account Number: 6019183001652676

Our File Number: 120000382643 Previous Balance: \$ 16,039.15 Current Balance: \$4,039.15

Dear Sir/Madam:

As per your conversation with this office on March 15, 2011 we have been authorized to receive and accept the amount of \$4,039.15 as complete payment on the above stated account. We acknowledge your previous payments \$11,000.00 paid on 12/21/2009 and \$1,000.00 paid on 5/25/2010. The remaining balance of \$4,039.00 is due in this office on or before 3/30/2011.

\$16,039.15 Previous Balance \$11,000.00 paid 12/21/2009

\$1,000.00 paid 5/25/2010

\$4,039.15 Current Balance Due on or before 3/30/2011

Your payment(s) must be made payable to "Daniels & Norelli, P.C., as attorneys for CACH, LLC" and mailed to the above address.

Please take notice, any delay in the issuance of the payment checks past the payoff deadline, may make this enti agreement null and void without further notice; and the total remaining balance together with accruing interest will be du

To indicate your acceptance of this payment agreement, kindly sign a copy of this letter, and return it to n immediately. By doing so you will also acknowledge your liability for this obligation and the accuracy of the informatic contained in this letter.

If you have any questions, please contact Michelle Rivera at Ext. 3055. Thank you for your cooperation in the

matter.

Very truly yours

Fred G. Daniels, Esq./George H. Norelli, Esq. James P. Scathy, Esq./Meredith E. Unger, Esq. Ira R. Sitzer, Esq./Joshua R. Bronstein, Esq.

Agreed:

SANDRA SAILSMAN

This is an attempt to collect a debt and any information obtained shall be used for that purpose.

EXHIBIT E

SANDRA L SAILSMANT 3015 PERRY AVE APT 3G BRONX, NY 10458-1721 April 3, 2011 MICHELLE RIVERA DANIELS & NORELLI, PC ATTORNEYS AT LAW ONE OLD COUNTRY RD Suite LL5 LARLE PLACE NY 11514 Dear Ms Riveraj I have yet to receive the first mailing of your letter dated March 15. The second mailing was received April 2, 2011 Regarding your file number: 12000038264: Crestitor Ca.B. Money As of November 10,2009 the total monies paid by me were \$13,645 with a Swbsequent payment of \$1,000 on April 30, 2010. bringingmy total paid to the Creditor \$14,045. I was informed my total debt at the time was #U13,916.47.

10/2

Please research this further with GE. Money.

Please research this further with Millian to My home address.

Most Sincery Sandards.

20/2

EXHIBIT F

DANIELS & NORELLI, P.C.

Attorneys at Law

FRED G. DANIELS* GEORGE H. NORELLI JAMES P. SCULLY* ISAAC N. TUCHMAN

MEREDITH E. UNGER JOSHUA R. BRONSTEIN IRA R. SITZER

Also admitted in: * New Jersey

ONE OLD COUNTRY ROAD SUITE LL5 CARLE PLACE, N.Y. 11514

1-800-332-3306 1-516-338-7520 Fax 516-338-6060

April 20, 2011

TO: SANDRA SAILSMAN 3015 Perry Ave, 3G Bronx, NY 10458

Re: CACH, LLC -v- SANDRA SAILSMAN

Index No.: 02235/11

Original Creditor: GE MONEY BANK / CARE CREDIT

Original Account No: 6019183001652676

Our Account No.: 120000382643 Total Amount Sued for: \$ 1,916.47

Dear SANDRA SAILSMAN:

Enclosed please find Plaintiff's first set of Interrogatories. If your client would like to settle this matter, please correspond with me within fifteen (15) days.

If you have any questions, do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Very truly yours,

Jøshua R. Bronstein

/ws Encl.

Federal Law Requires Us To Advise You That We Are Attempting To Collect A Debt And Any Information Obtained Will Be Used For That Purpose.

| CIVIL | COURT | OF THE | CITY | OF | NEW | YORK |
|-------|---------|--------|------|----|-----|------|
| COUN | TY OF E | RONX | | | | |

CACH, LLC,

Plaintiff,

INDEX NO.:

02235/11

-against-

SANDRA SAILSMAN,

PLAINTIFF'S FIRST SET OF

INTERROGATORIES

Defendant(s).

The Plaintiff requests that the Defendant(s) answer under oath, and in accordance with CPLR Article 31, the following interrogatories:

- 1. Did you interpose an answer that includes a general denial of the allegations that were asserted in the complaint? [If you answer "no" to this interrogatory, skip to interrogatory number 3.]
 - 2. If yes, what are the facts that you will tell the Court in support of your denials?
- 3. Does your answer deny your having been served with the summons and complaint and/or does the answer claim that service of the summons and complaint was not correct as required by law?

 [If you answer "no" to this interrogatory, skip to interrogatory number 10.]
- 4. If you answered yes to interrogatory number 3, on what date and how did you first learn of the existence of this court action?
- 5. If you answered yes to interrogatory number 3, what was the address where you lived on the date on which the affidavit of service claims you were served?

- 6. With regard to the address you provide in response to interrogatory number 5, do you have a lease, rent receipts or other papers that documents or proves your residence at that address? If yes, provide a copy of each document.
 - 7. How many copies of the summons and complaint did you ultimately receive?
- 8. With regard to each copy that you received, on what date was each received; to what address was each copy delivered; and how was each copy delivered?
 - 9. In what way did the service of the summons and complaint not comply with the law?
- 10. If your answer claims that you do not owe this debt, what are the facts that you will tell the Court to support of this claim?
- 11. If your answer claims that you did not incur this debt and that you are a victim of identity theft or mistaken identity, did you report the identity theft or mistaken identity to the original creditor, to the police or to any other person or entity? [If you answer "no" to this interrogatory, skip to interrogatory number 13.]
- 12. If your reply to interrogatory 11 is "yes", to whom did you make the report and what was the date of the report? Provide a copy of each report. If the report was not in writing, describe the content of the notice, and identify, by name, address and telephone number, the person who received the notice.

- 13. Does your answer contain a claim that you paid all or part of the alleged debt? [If you answer "no" to this interrogatory, skip to interrogatory number 15.]
- 14. If you answered "yes" to interrogatory 13, what payments did you make, and on what date was each payment made? Annex a copy of each cancelled check, cash receipt or other document that you intend to show to the Court in order to prove payment.
- 15. If your answer says that you dispute the amount of the debt, what are the facts that you will tell the Court explaining why you dispute the amount? [If you answer "no" to this interrogatory, skip to interrogatory number 17.]
 - 16. What amount, if any, do you acknowledge owing to the plaintiff?
- 17. Does your answer contain a claim that you have no business relationship with the plaintiff?

 [If you answer "no" to this interrogatory, skip to interrogatory number 21.]
- 18. If you answered "yes" to interrogatory number 17, what are the facts that you will tell the Court to support your claim?
 - 19. Did you have a business relationship with the company that originated the account with you?
 - 20. What is the name and address of the company that originated the account with you?

- 21. Does your answer contain a claim that the NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt? [If you answer "no" to this interrogatory, skip to interrogatory number 24.]
- 22. If you answered "yes" to interrogatory number 21, did you communicate with the Department of Consumer Affairs in writing, and did the Department respond to you in writing? If yes, provide a copy of your communication and of the Department's response.
- 23. Do you have any other documentation proving that the plaintiff does not have a license to collect a debt? If yes, provide a copy of each document.
- 24. Does your answer contain a claim that the plaintiff did not allege a debt collection license in the complaint? [If you answer "no" to this interrogatory, skip to interrogatory number 26.]
- 25. What are the facts that you will tell the Court in support of your claim that the plaintiff is required to be licensed in order to collect this obligation?
- 26. Does your answer contain a claim that the statute of limitations bars this action and that the time to sue on this debt has passed? [If you answer "no" to this interrogatory, skip to interrogatory number 28.]
- 27. If you answered "yes" to interrogatory number 26, what was the date on which you failed to pay the obligation, and what was the date and amount of the last payment made by you toward the debt?

- 28. Does your answer contain the claim that this debt has been discharged in bankruptcy? [If you answer "no" to this interrogatory, skip to interrogatory number 30.]
- 29. If you answered "yes" to interrogatory number 28, what is the case number of your bankruptcy filing; in what Court and District did you file; on what date was the petition filed; and on what date was your discharge granted? Provide a copy of your schedule of creditors and a copy of the discharge order.
- 30. Does your answer claim that the collateral (property) was not sold at a commercially reasonable price? [If you answer "no" to this interrogatory, skip to interrogatory number 32.]
- 31. If you answered "yes" to interrogatory number 30, what was the retail value and what was the wholesale value of the property on the date of the repossession? Provide a copy of all documents, including condition reports, appraisals, evaluations, that you will submit to the Court to support your claim as to the value of the property.
- 32. Does your answer allege unjust enrichment (the amount demanded is excessive compared with the original debt)? [If you answer "no" to this interrogatory, skip to interrogatory number 34.]
- 33. If you answered "yes" to interrogatory number 32, what are the facts that you will tell the Court in order to explain this claim? When answering this question, state the amount of the original claim, and the amount of the difference that you believe is excessive.

- 34. Does your answer contain a claim that the plaintiff has violated the duty of good faith and fair dealing? [If you answer "no" to this interrogatory, skip to interrogatory number 36.]
- 35. If you answered "yes" to interrogatory number 34, what are the facts that you will tell the Court to support your claim of bad faith and unfair dealing?
- 36. Does your answer contain a claim of unconscionability (the contract is unfair)? [If you answer "no" to this interrogatory, skip to interrogatory number 38.]
- 37. If you answered "yes" to interrogatory number 36, which specific provisions and paragraphs of the contract do you claim are unfair, and what facts will you tell the Court in order to explain the unfairness?
- 38. Does your answer contain a claim of laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage)? [If you answer "no" to this interrogatory, skip to interrogatory number 40.]
- 39. If you answered "yes" to interrogatory number 38, what is the nature of the disadvantage that you claim?
- 40. Does your answer contain an allegation that the defendant is in the military? [If you answer "no" to this interrogatory, skip to interrogatory number 42.]

- 41. If you answered "yes" to interrogatory number 40, do you have service records to support this claim? Provide a copy of your orders.
- 42. Does your answer contain any "other" defenses? [If you answer "no" to this interrogatory, skip to interrogatory number 44.]
- 43. If you answered "yes" to interrogatory number 42, what are the facts that you will tell the Court to support this defense?
- 44. Does your answer contain a claim that your only source of income is exempt from collection? [If you answer "no" to this interrogatory, skip to interrogatory number 46.]
- 45. If you answered "yes" to interrogatory number 44, what is the source of the income, and what is the nature of the exemption? Provide copies of all awards and payment notices that show the source of the exempt funds.
- 46. Does your answer contain a counterclaim? [If you answer "no" to this interrogatory, skip to the signature line.]
- 47. If you answered "yes" to interrogatory number 46, what are the facts that you will tell the Court in support of your counterclaim?

48. If you answered "yes" to interrogatory number 46, how did you calculate the amount demanded by you? Provide copies of all estimates, appraisals and other documents that you show to the Court in support of you counterclaim.

49. In reference to Defendant's Answer, explain why Defendant does not owe the full amount owed, and state how much Defendant admits to owing. Provide any and all supporting documentation, including copies of any payments made on the account.

PLEASE TAKE FURTHER NOTICE that a copy of the answers to these interrogatories must be served upon the undersigned within 20 days of the service of these interrogatories.

Dated: Carle Place, New York April 20, 2011

By:

JOSHUA R BRONSTEIN, ESQ.

Daniels & Norelli, P.C.

Attorneys for Plaintiff

One Old Country Road, Suite LL5

Carle Place, NY 11514

516-338-7520

To:

SANDRA SAILSMAN 3015 Perry Ave, 3G

Bronx, NY 10458

THIS COMMUNICATION IS FROM A DEBT COLLECTOR, AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

EXHIBIT G

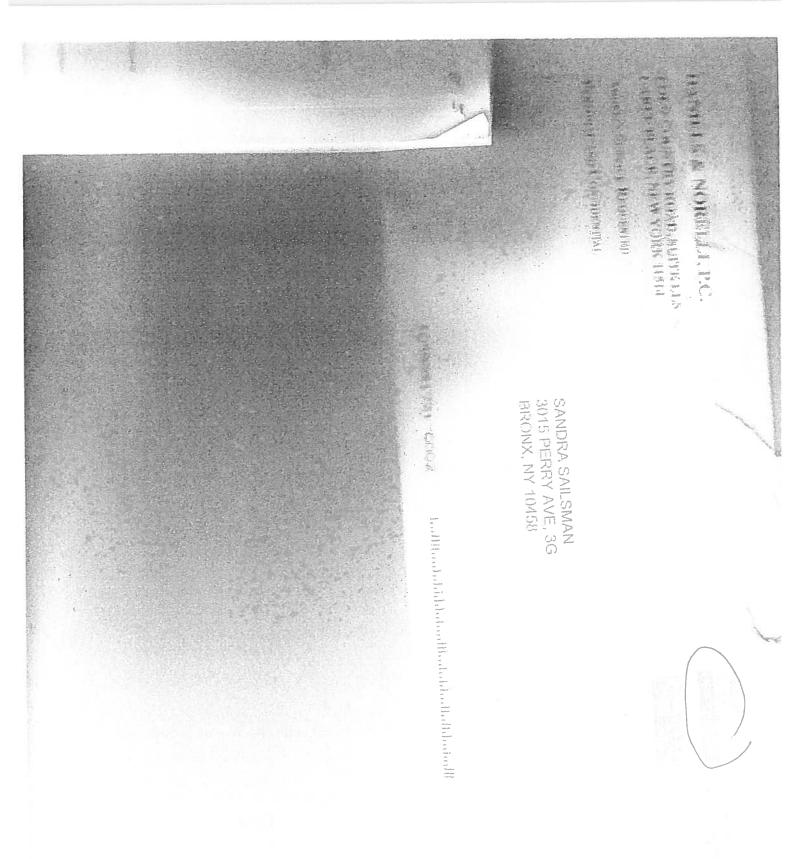


EXHIBIT H

| CIVIL COURT OF THE CI COUNTY OF BRONX: Par | TY OF NEV ct 35C | W YORK | | | | |
|---|---------------------------------------|----------|---------------------|-------|-------------------|-----------------------------|
| CACH, LLC, | , , , , , , , , , , , , , , , , , , , | | | INDEX | NO. 022 | 35/11 |
| -against- | Plaintiff, | | - 6 - 67 - 87 | GRAN | T SUMM MENT IN | OTION TO ARY FAVOR OF |
| SANDRA SAILSMAN, | | | 1 | | * | |
| | Defendar | nt. X | | | 7 | |

PLEASE TAKE NOTICE, that upon the annexed affidavit of Plaintiff, sworn to on May 20, 2011, and the exhibits annexed thereto; the affirmation dated June 9, 2011 of Ira R. Sitzer, Esq., an associate of the law offices of Daniels & Norelli, P.C., attorneys for the Plaintiff, and the exhibits annexed thereto; the Plaintiff will move at the CIVIL Court of the CITY of NEW YORK, County of BRONX, located at 851 GRAND CONCOURSE, BRONX, NY 10451 on July 22, 2011, at 9:30 a.m., Room 504, Motion Part 35C of this Court, in which appearances are required, for Plaintiff to be heard for an Order pursuant to CPLR § 3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant upon the cause(s) of action set forth in the complaint for the reason that there is no defense or if there was one, it did not have merit.

The above-entitled action is for a Contract action. This action is on a trial calendar for 07/06/11. The calendar number is S-11-BX-002353.

THIS NOTICE IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

with drawn 7/22/11

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR § 2214(b), answering affidavits, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated:

Carle Place, New York

June 9, 2011

Ira R. Sitzer, Esq.

Daniels & Norelli, P.C.

One Old Country Road, #LL5

Carle Place, NY 11514

(800) 332-3306

To:

SANDRA SAILSMAN

3015 Perry Ave 3g Bronx, NY 10458

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

| CIVIL COURT OF THE COUNTY OF BRONX | CITY OF NEW | / YO | ORK. | | | | |
|------------------------------------|-------------|------------|------|--|------------|----|-----|
| CACH, LLC, | | | 4 | INDEX | NO. 02235/ | 11 | |
| | Plaintiff, | Plaintiff, | | AFFIRMATION IN SUPPORT OF MOTION TO GRANT SUMMARY JUDGM IN FAVOR OF PLAINTIFF | | | ENT |
| -against- | = 4 | | | ad ga | | 1 | |
| SANDRA SAILSMAN, | Defendant | | X | | | | |
| | | | | | | | |

Ira R. Sitzer, Esq., an attorney duly admitted to the practice of law in the State of New York, hereby affirms the following to be true pursuant to CPLR § 2106 and under the penalties of perjury states that:

- 1. I am an associate of the law firm of Daniels & Norelli, P.C., attorneys for CACH, LLC (hereinafter the "Plaintiff"), and as such, I am fully familiar with the facts and circumstances herein.
- 2. I make this affirmation in support of Plaintiff's motion to grant summary judgment in favor of the Plaintiff and against SANDRA SAILSMAN (the "Defendant"), in the amount of \$1,916.47, together with statutory interest from 7/21/2009 and costs of this action.
- 3. As set forth more fully below and in the accompanying Plaintiff's Affidavit,
 Defendant opened and maintained the credit card Account with Plaintiff's predecessor, monthly
 statements were mailed to Defendant, Defendant failed to make the required payments, Plaintiff
 is now the current owner of the Defendant's account and there is a balance due and owing. As of
 the date of this affirmation, the debt has not been assigned or sold to another entity. On this basis
 alone, Plaintiff's Motion for Summary Judgment should be granted as a matter of law.

- 4. This action was commenced by the purchase of index number 2235 on 01/07/11.

 Service of the Summons and Verified Complaint was made upon the Defendant on 02/08/11,

 pursuant to CPLR 308(2). A copy of the Summons, Verified Complaint and Affidavit of Service are annexed hereto as Exhibit "A".
- 5. The Defendant filed an Answer with the Court on 03/04/11. A copy of the Answer is annexed hereto as Exhibit "B".

Plaintiff Should Be Granted Summary Judgment

- 6. "To obtain summary judgment, it is necessary that the movant establish his cause of action or defend 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212[b]), and he must do so by tender of evidentiary proof in admissible form".

 See Zuckerman v. New York City Transit Auth., 49 N.Y..2d 557, 404 N.E.2d 718, 427 N.Y.2d 595.
- 7. When the party seeking summary judgment demonstrates entitlement to judgment the burden shifts to the opponent to "rebut that prima facie showing" (Bethlehem Steel Corp. v. Solow, 51 NY2d 870, 872 [1980], by producing "evidentiary proof in admissible form sufficient to require a trial of material questions of fact." (GTF Mktg. V. Colonial Aluminum Sales, 66 NY2d 965, 968 [1985]; Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]. In opposing such a motion, the party must "lay bare" its evidentiary proof. (Silberstein, Awad & Miklos P.C. v. Carson, 304 AD 2d 817, 818 [2d Dept 2003]). Conclusory allegations are insufficient to defeat the motion. (Zuckerman v. City of New York, 49 NY2d at 562).
- 8. "[t]he absence of an underlying agreement, if established, would not relieve [defendant] of his obligation to pay for goods and services received on credit", Citibank (S.D.)

 N.A. v. Roberts, 304 A.D.2d 901, 757 N.Y.S.2d 365, see also Great Seneca Fin. Corp. v. Brown, 18 Misc. 3d 140A (Appellate Term, First Dept., 2008).

Amount claimed is due

- 9. Defendant alleges that she does not owe this debt as she paid her debt in full.

 Defendant's allegation is vague and unsubstantiated. In order to demonstrate a meritorious defense, a party must make sufficient factual allegations and must do more than merely make conclusory allegations or vague assertions. Peacock -v- Kalikow, 658 NYS 2d 7, see also Mandell -v- Stein, 183 AD 2d 488.
- 10. Defendant maintained the underlying credit card account for almost two (2) years, in which payments and charges were posted on a revolving basis, and account statements were accepted and retained without objection. Additionally, the account statements annexed hereto were addressed to the Defendant at the same address that Defendant states is her current residence. Subsequently, Defendant defaulted on the account stated. The final account statement dated 07/21/09 indicates the balance in the amount of \$13,916.47 being charged-off. Thereafter Defendant made voluntary payments totaling \$12,000.00, leaving an amount due of \$1,916.47, which is the amount claimed herein. Plaintiff's affidavit and annexed documentation supports the underlying claim. Defendant's defense is without merit.
- 11. The Defendant's receipt and retention of a Plaintiff's account without objection within a reasonable period of time entitles the Plaintiff to summary judgment on the account. An action for an account stated is not an action by the card issuer to enforce liability for use of the credit card and it is unnecessary for Plaintiff to set forth the subject matter of the original debt to establish its cause of action for an account stated. Citibank (South Dakota), N.A. v. Macarle, 11 Misc. 3d 128A, 815 N.Y.S.2d 493 (App. Term, Second Dept., 2006); see also Morrison Cohen

Singer & Weinstein, LLP v. Waters, 13 A.D.3d 51, 786 NYS 2d 155 (App. Div., First Dept., 2004); Citibank (SD) N.A. v. Reine, 14 Misc. 3d 130A; 836 N.Y.S.2d 484.

- 12. The receipt and retention of a bill, without objection within a reasonable time, gives rise to an actionable account stated independent of the original obligation, see <u>Fink</u>, <u>Weinberger</u>, <u>Fredman</u>, <u>Berman & Lowell</u>, <u>P. C. v. Petrides</u>, 80 A.D.2d 781, 437 NYS 2d 1 (App. Div. First Dept.).
- 13. It is well settled that a motion for summary judgment should be granted where, as here, a thorough examination of the merits clearly demonstrates the absence of any genuine or triable issues of fact, and, thus, there is no necessity for a trial. See, e.g., St. Paul Industrial Park, Inc. v. New York State Urban Development Corp., 63 A.D.2d 822, 406 N.Y.S.2d 178 (N.Y. App. Div. 4th Dep't 1978).

14. No previous application for the relief requested herein has been made.

WHEREFORE, Plaintiff respectfully requests an Order pursuant to CPLR § 3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant in the amount of \$1,916.47 together with statutory interest at the rate of 9.0% from 7/21/2009 and statutory costs of this action.

Dated: Carle Place, New York June 9, 2011

Ira R. Sitzer, Esq.,
Daniels & Worelli, P.C.
Attorneys for Plaintiff
One Old Country Road, #LL5
Carle Place, NY 11514
(800) 332-3306

To: SANDRA SAILSMAN

3015 Perry Ave 3g Bronx, NY 10458

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

| CIVIL COURT OF THE CI COUNTY OF BRONX | TY OF NEV | У Ү | ORK X | INDEX NO | 0223 | 35/11 | | |
|--|------------|------------|----------|----------------------|-------|-------|------------|--------|
| CACH, LLC, | Plaintiff, | Ť | 3 . | PLAINTII IN SUPPO | RTO | F MO | TIO | r N |
| -against- | | | | TO GRAN | NT IN | FAV | RY OR C |)F |
| SANDRA SAILSMAN, | Defendan | it. | X | PLAINTI | FIF | (8) | | |
| STATE OF COLORADO COUNTY OF DENVER |) ss:) | .0 | | | | · | | |
| I CIVI V | 11111 | bei | ng duly | sworn, deposes | and s | ays: | | *: |

- 1. I am an authorized agent and custodian of record of CACH, LLC (hereinafter referred to as "Plaintiff"). I make this Affidavit in support of Plaintiff's motion, which seeks summary judgment in favor of the Plaintiff and against SANDRA SAILSMAN (the "Defendant") in the amount of \$1,916.47 together with interest at the rate of nine percent (9%) from 7/21/2009 and costs of this action.
- 2. As part of my duties for Plaintiff, I am personally familiar with the manner and method by which Plaintiff creates and maintains its books and records, including computer records of credit card accounts such as the credit card account of Defendant. I have personally reviewed Plaintiff's business records relating to the facts stated in this Affidavit concerning Defendant's credit card account.
- 3. This action was brought by Plaintiff to recover the unpaid balance due and owing by Defendant on a credit card issued by GE MONEY BANK, identified by account number now known by 6019183001652676 (the "Account").
- 4. Based upon the documentation as provided by the original creditor, pursuant to the express terms of the agreement, the agreement became binding upon the first use of the credit

2

- 5. Based upon the documentation as provided by the original creditor, Defendant after having had the use and benefit of the subject credit card account. Defendant breached the Agreement between the parties by failing to make the payments due as required by the Agreement.
- 6. Based upon the documentation as provided by the original creditor, account statements were mailed to the Defendant advising Defendant of said delinquency and demanding payment. The delinquent statements contained a statement of what was due and owing and it was never challenged. Despite due demand for same, Defendant has failed and continues to fail to make payment. Defendant became responsible for paying outstanding balance owed on the account in accordance with the agreement. Copies of the statements of account, currently in Plaintiff's possession, are annexed hereto as Exhibit "__D_".
- 7. Based upon the documentation as provided by the original creditor, credit was extended credit to the Defendant to pay for various goods and services charged to the Account. By valid assignment Plaintiff, CACH, LLC, as the successor in interest, is contractually entitled to collect the amount owed on the Account. A copy of the Assignment is annexed hereto as Exhibit "__E__". As of the date of this affidavit, the debt has not been assigned or sold to another entity.
- 8. Based upon the documentation as provided by the original creditor, Defendant never disputed the validity of the balance owed or notified of any recognizable defenses, claims, offsets or counterclaims to the balance due and owing, and, as such, an account stated was created.

Sworn to me on

MAY 2 0 2011

Notary Public



| CACH, LLC, | Plaintiff, | Index No.: 02235/11 |
|--|---|--|
| SANDRA SAILSMAN, | Defendant. | CERTIFICATE OF CONFORMITY |
| STATE OF COLORADO) COUNTY OF DENVER) | ss.: | |
| I, Elizabeth E. Garcia COLORADO, certify that I am f pertaining to the acknowledgment to make this certificate of confor notarization on the attached document the State of COLORADO, on prescribed by the laws of the State | ully acquainted with the law of proofs of deeds of real propriety; and I certify that the action, taken by KATARZYNAK | erty; I certify that I am qualified knowledgment or proof on the RASZEWSKA notary public of 3, was taken in the manner |

In witness thereof, I set my hand and affixed my seal on

¹ Insert the name of the attorney.
² Insert the name of the notary.
³ Insert the date of the notarization.
⁴ Insert the date attorney signed.

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| CLEAT: | | | 02235-11 |
|---|-----|------|----------------------------|
| CIVIL COURT OF THE CITY OF NEW YO COUNTY OF BRONX | ORK | | DATE PURCHASED: 01/07/2011 |
| ADMERIPETRICKER: CACH, LLC | | | · |
| FD00AMBRESPORGENT(S): SANDRA SAILSMAN | | | * |
| | | | |
| | | | 0, |
| OCCUMENTS: SUMMONS AND VERIFIED COMPLAINT | | | |
| | | | |

STATE OF NEW YORK NASSAU

WALID MOUSA RAMADAN, the undersigned, being duly sworn, deposes and says:

I am over the age of 18 years, I reside in the state of New York and am not a party to this action.

On 02/08/2011 at 10:00 AM, deponent served the aforementioned documents on SANDRA SAILSMAN at 3015 PERRY AVE 3G, BRONX, NY 10458 in the manner indicated below:

By delivering and leaving a true copy or copies of the aformentioned documents with said "JANE DOE", CO-OCCUPANT a person of suitable age and discretion. Person spoken to stated that said premises is intended recipient's residence within the state of New York. On 02/11/2011 deponent deposited in the intended recipient's residence within the state of New York. On 02/11/2011 deponent deposited in the United States Post Office a true copy or copies of the aforementioned documents properly enclosed and United States Post Office a true copy or copies of the aforementioned documents properly enclosed and united States and the aforement and the property enclosed and sealed in a post-paid envelope addressed to said Defendant(s) at 3016 PERRY AVE 3G, BRONX, NY 10458. Copy sealed in a post-paid envelope addressed to said Defendant(s) at 3016 PERRY AVE 3G, BRONX, NY 10458. Copy sealed in the cutside thereof, by return address or otherwise that said notice is from an attempt or concerns an action against the person to be served. Deponent asked the indicated person whether the defendant and/or present occupant was presently in the military service of the United States Government or on active duty in the military service of the State of New York or a dependant or anybody in the military and was told defendant and/or present occupant was not. occupant was not.

DESCRIPTION OF PERSON SPOKEN TOWAPERS LEFT WITH

Sax: Fernale - Skin: Black - Hair: Black - Ago: 41-49 - Height: 5'0"-5'3" - Weight: 150 - 174 lbs Other: RECIPIENT REFUSED TO REVEAL NAME

Sworn to and subscribed before me on 02/11/2011

ANTHONY J BARONE Notary Public, State of New York No. 01BA4801103 Qualified in NASSAU Commission Expires 02/28/2014

WALID MO Licenset 1978369

Atty# 12000382843-281-14

THE BIT WILL SE

YTHING WIL Accu-Serve Ltd., 1800 Stawart Avenue, Suite 309, Westbury, NY, Daniels & Norelli, One Old Country Road Suite LLS, Carle Place

| Civil Coun | Court of the City of New York | Index N | o: CV-002235-11/BX | |
|---------------|--|--|---|-----|
| | H, LLC -against- | ANSWER CONSUMER CRE | IN PERSON DIT TRANSACTION | |
| | DRA SAILSMAN | | | |
| De | efendant, SANDRA SAILSMAN, at 3015 PERRY AVE 3G, Bronx, | NY 10458- , answe | rs the Complaint as | |
| Date | d: 03/04/2011 | | | |
| (Chi | eck all that apply) General Denial: I deny the allegations in the complaint | 100 To 10 | | |
| 1 - | SERVICE | <i>H</i> , | 1 T T T T T T T T T T T T T T T T T T T | |
| 2 . | I did not receive a copy of the summons and complaint | | 11.98 | |
| 3 | I received the Summons and Complaint, but service was r | not correct as require | d by law. | |
| ٠ . | DEFENSES | | | |
| 4 | XX I do not owe this debt | | | |
| 5 | I did not incur this debt. I am the victim of identity theft of | r mistaken identity. | | |
| 6 | XX I have paid all or part of the alleged debt. | | | |
| 7 | I dispute the amount of the debt. | 28 | | |
| 8 | I do not have a business relationship with Plaintiff. (Plai | ntiff lacks standing.) | 0.5 | |
| 9 | The NYC Department of Consumer Affairs shows no record of | plaintiff having a lice | nse to collect a debt. | |
| 10 | Plaintiff does not allege a debt collection license number | in the Complaint. | | |
| 11 | Statute of Limitations (the time has passed to sue on this | debt: more than six | years.) | |
| 12 | The debt has been discharged in bankruptcy. | on 11 g | | |
| 13 | The collateral (property) was not sold at a commercially | reasonable price. | 1 | |
| 14 | Unjust enrichment (the amount demanded is excessive or | ompared with the ori | ginal debt.) | |
| 15 | Violation of the duty of good faith and fair dealing. | | | |
| 16 | Inconscionability (the contract is unfair.) | | | |
| 17 | Laches (plaintiff has excessively delayed in bringing this | lawsuit to my disad | vantage.) | |
| 18 | Defendant is in the military. | | N A ST | |
| 19 | XX Other: DEBT PAID IN FULL | | | |
| ı | OTHER | | Cartina | |
| 20 | Please take notice that my only source of income is | , which is exempt | Hom collection. | |
| | COUNTERCLAIM | | | 100 |
| 21 | Counterclaim(s): \$ Reason: | ia assa : Naut 11 | C Non Jury - Self-Renresen | rte |
| Th | is case is scheduled to appear on the calendar as follows: Ap | oril 12, 2011 m Part 11 | C - Mon-sury - Both Indiana | |
| - Co | onsumer Debt, om 504 at 10:30 AM Both sides notified: | 9 | | |
| To: | | ID - DMV | | |
| | Daniels & Norelli, PC | ID - DIAT A | CLERK'S OFFICE | |
| | 1 Old Country Road, Suite LL5 Carle Place, NY 11514- | | MAR 0 4 2011 | |

Information We Share with Others - We may use information we collect, subject to explicable law, with exemples are not intended to be effectively. n and share all of the house the south

 Provider and its effiliates and program epomeors (as applicable), for use in correction with this Carechredi consumer credi program and as otherwise permitted by law. They may use this information to upodes that records, to provide you with notices of special promitions and perform before differings, to encover questions about this Account and perform other Conscious program informs or the utiest purposes permitted by law. They may use their editions, docurson, providers (such as modeling and distances comparities) to essent them in any of these activities. Service Providers and program operators (including our attitutes), to essist us in servicing Accounts, the program buting adjuntation and promotional materials, and responding to customer inspurities. We storm use interiority firms, such as modeling companies, to assist us in our own manifesting efforts.

Finencial Institutions with whom we jointly offer finencial prod-ucts, such as been products or credit insurance. If your billing address is in Vermon, this information will be limited to your rame and corded information, and transaction and experience information on the Account

GEMB's affiliated, who are other companies in the Gentural Electric Company corporate family (GEMB Affaites) for servicing or the Gentural conditions as when the your right to got out of stering of codit outputs information such as carbon from read to treasure and your application, as provided in the its Your Choice section below. Suited to your right to got out, GEMB Affaites also may use information born us concerning your codit editably, and your transactions and exprehence with us, to send you managing excitations about products and services.

Third Parties, who are interested in offering special products or services to you subject to your right to got out as provided in the 8th Your Chaire section below. For exemple, we discloss information, after directly or fartugh Provides representations and services products such as featured, martiages or bears, and non-francial compariso offering consumers and services. We may disclose reams, editests and interior products and services. We may disclose reams, editests and interior numbers, as well as Account purchases and performance history.

Others: We report Account information, such as credit find, bathnoss and payment information, to credit bureaux, in sufficient, we may buy and self assets; finas of business another Accounts. When this occurs, customer information generally is descreade to bidness and is one of the transferred business assets. We also discuss information about you to that parties in certain other circumstances, as parnithed by law.

If's Your Choics - You have the right to opt out of our sharing of information with certain third parties, as described below. To opt out perso call us builting at 1437/06-2597, or with to us at P.O. Box 931435, El Paso, 17 7398-9435. If you have proviously informed us of your protection, you do not need to do so again.

you opt out, you will be directing us as follows:

the not share information about me with companies other than with GEMB Atfillates, and with Provider and its affiliates and program aponares (as applicate) for use in connection with this credit program and as otherwise parmitted by law. Do not share with GEMB Affiliates information used to determine my eligibility for credit. Do not allow GEMB Affiliates to solicit my for products and sortices besued on transaction, experience or credit eligibility information they receive from GEMB.

Important Notes About Your Chalce

Please understand that, even if you got out as described chove, we will continue to share infametion with the Provider and in affiliates and program; sponsors (as expiratello) association with this Account, joint program; portions and savivas providers as described in this publy, and as otherwise permitted by they provide we will continue to share information that terrifless you, and about your transactions and experiences with us, with SEMB Affiliates.

- If you have a joint account, a request by one on the Account. party will apply to all parties
- We will process your request promptly. However, it may take us servaral wooks to ensure that all excepts are updated with your preference. In the interior, you may continue to be induced in programs as described above. Also, after your request is processed, you may sell be contacted by GENB Affaites endlor other companies based on their own latermation.
- Vermont Residents: If (and white) your balling address is in Vermont, we will treat your Account as it you had exercised the opt-dut choice described above and you do not need to contact us in order to opt out. If you move away from Vermont and you wish to restrict us from stealing information about you as provided in this Policy, you must then contact us to exercise the opt-out choice described above.

Our Bocurthy Pracedures — We maintain physical, electronic, and procedural safeguerds that comply with federal standards to guerd morphotic personal information about you. We first access to personal and Account Information to those amplyees and agents who assist us in providing products and cervices to you. We see require third parties to whom we disclose no public personal information to adhere to this Physicy and to establish information security information is although the process of the proc

Your Access to information — We provide you access to information about your Account by sending you monthly billing classenents outbridg your tearsections, finance charges, and other Account information, and by providing outbries service representatives to answer your questions.

How This Pelicy Applies to You — The examples contained in this Privacy Policy are Instrictors only, and are not intended to be althocustus. If you docide to close your Account, or becare an insuffire cutations, or if we close or suspend your Account, we will confine to althorise to the privacy positions and practices described in this notice to the extent we retain information actious you. We may enrand this Privacy Policy at any time, and we will inform you of changes as required by lear. You may have other privacy protectors under state there are not well comply with applicable state leave without well disclose information about you. This Privacy Policy applies only to this consumer oracle Account with CE Money Bank and document with CE Money Bank and document of the accounts you may have with us, and replaces our previous disclosures to you about our naturation practices.

Even If you got out, we will continue to provide you with billing breats must notices of special offers and naw barnatis. 3

PERIODIC FINANCE CHARGES.

. The periodic Finance Changes will be determined separately for changes incurred under any Special Payment Plan in accordance with the learns cetablished for such Special Payment Plan in understand such determined that this Account provides for the daily compounding of periodic Finance Charges.

PERIODIC RATES.

A. The Periodic Ratin for your Purpless Balance is the Purchases Standard Ratin unities the Definitionary Ratin applies as described below. The Purchase Standard Ratin has failing period is the greater of (i) the Prime Ratin that 14,73%, times 1,356, or (ii) _08255% (APR 22.95%). The Prime Ratin for a luting period is the highest bank prime ican ratin a hufflest aid in the Money Ratins Section of The What States Justice, on the first burning and the failing period. And d'outlier first period and the fail of the Carlos (1, 2006, the Purchase Standard Ratin was 06285% (APR 22.98%).

account information, visit us at www.georaineservice.com

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089-239-00 Rovision Date: Print Date:

CREDIT CARD AGREEMENT GE MONEY BANK

You need not accept this credit could or pay any fee disclosed unless you see the care.

1. GENERAL. This Appearient ("Agricoment") governs your CareCredit credit cerd recover ("Account"). In "this Appearant and your billing statement ("Bitclement"). We it "but," and "our" means GE", Money Bank. "Quid South Rusripcat Rul, "Quid South State Line ("Out," UT 64 (23-254). "Your and 'your means all persons who we appure to use the Account; and "Gard means your CareCredit Credit Orall Coud. The effective date who have been appearant with the segment of the text uses the Account appearant had be seen and the first than the first your careful of the date you cannet an Account appearant had be seen and the first your careful of the date who shall be an Account appearant with the first uses the Account or (ii) the text uses the Account or (iii) the text uses the Account or (iii) the Account or (

2. USE OF ACCOUNT: You may use your Account (i) to purchase goods and services (Purchasess). (ii) to obtain cash activariose (Clash Advances) by writing contriverience checks (Convertances Checks) we may provide to you ten may to the or the convertance (Checks) we may provide to you ten may see wastake, or (iii) to transfer their one for my of more they down means we may made wastake or (iii) to transfer their one of may be down the case of the checks) we may exclude it freehears it may the form the form the form the form the form the form the checks of the feature in the form the down the form of the feature in the form of the form the form of the feature in the feature in the form of the feature in the

PROHESE TO PAY. You promise to pay us for all credit that we extend on your Account for Perchases, Belance Transfers, Cash Advences, and all pitter amounts owed to us under the terms of the Agreement.

A. We calculate the partodic Finance Charge expensibly for Purchases and Cash Advances. The Annual Percentage Rate may sometimes be retend to set "APR". For each billing partid in which a partodic Finance Charge is the partodic Finance Charge is the burled of the seminant of the Finance Charge is the burled of the seminant of the partodic Finance Charge cabused during the current billing partod, the seminant of the partodic Finance Charge the first was restorated on that Purchase Betance during the parto billing partod, the seminant of the partodic Finance Charge the second teating partod in the billing partod is resulted by a portiodic Finance Charge arrowing. A minimum Finance Charge arrowing a difference Charge arrowing to the partodic Finance Charge ar

. The Periodo Robe to your Closh Advance Bedence is the Closh Standard Robe, where the Definitionary Robe guides as described below. The Closh Standard Robe for a billing partied is in greater of in the Prime Robe place 17.7%, then \$1555, or (0) \$650576 (APR 22.9876). As all October place 14.77%, then \$1555.00 (APR 22.9876). As all October \$1,2006, the Closh Standard Robe was \$1525976 (APR 22.9876).

C. The Periodic Rates and consesponding APRu for all Account bulances (including any particular) may be harmased if you fall to make a required Marhumin Payment by the Payment Duo bate, you traits a required Marhumin Payment by the Payment Duo bate, you traits a conjument in the fall is not increased by your busin or you consold your payment in the fall is not increased by your busin for you busin the potential factors for the factors for the

D. The Periodic Rates and Corresponding APAs may very, If the Phine Rate increases, the Periodic Rates and corresponding APAs may increase and, as a result the periodic Flavana Charga, Mahman Payment and number of payments also may horates. Any drange in the remark critical suit apply to your entite Account belance (unless other Periodic Reside Mayment). A change in the Prine Rate will be effect on the first drange that burning partied that commerces after the change. We may select a new interest sets index if the Prine Rate is not excitated.

 BALANCE SUBJECT TO PERIODIC FINANCE CHARGES. The balance subject to a periodic Finance Charge is exclusived separately for Purchases and Cash Advances. A. The Purchase Balance subject to a psincist Finance Charge is the Purchase Daily Balance of the Account. To determine the Purchase Balance, we take the professor of the Purchase Balance, we take the professor of the Purchase Balance, and old any law Purchases Balance in Your Account which includes united up harder. Finance Charges on Your Account stat day, and substact any payments and other details charged to your Account stat day, and substact any payments and other charges on your Purchase Balance that day, seach day we see add only only the professor of the Purchase Salance and other Finance Charges on your Purchase Salance and other Finance Charges on your Purchase Salance of the Advances, Industry and tees (Other then Transaction Face for Cash Advances), Industry and the yout account. This ghost is the Purchase Daily Balance of the Account. Any Purchase Daily Balance of itse Account. Any Purchase Daily Balance of itse Account. Any

B. The Cesh Arbanica Belanco subject to a prointing Finance Change is the Cesh Arbanica Delly Belance of the Account. To distantive the Cesh Arbanica Delly Belanca, we lead the prior tally 6 Cesh Arbanica Belanca, we lead the prior tally 6 Cesh Arbanica Belanca of your Account, which texturies any unpaid periodic Finance Changes on your Cesh Arbanica Belanca, and and any new Cesh Arbanica, including any Belanca Transiens that are treated as Cesh Arbanicas. Transection Free for Cesh Arbanicas and periodic Finance Changes on your Cesh Arbanica Belanca that periodic and other credit applied to your Cesh Arbanica Belanca that periodical and other credit applied to your Cesh Arbanica Belanca that can be considered to your Cesh Arbanica Belanca that can be considered to your Cesh Arbanica Belanca of the Account Cesh Arbanica Desty Belanca of the Account Cesh Arbanica Desty Belanca of the Account Cesh Arbanica Desty Belanca of less than zero will be invested as zero.

D. We reserve the right to esteed the misthod by which payments and readls are allocated to your Account in our sub discrete. The payment readls are allocated motivod that we use may result in higher France Charges on your Account, disporting on the lopes of transactions you make fauch as promiseral or non-promiseral fluxibises), and the timing and emount of your payments. For example, on promotions engularly a Neimrum of your payments. For example, on promotions engularly a Neimrum Payment, payments, for example, on promotional expression. If you have a non-promotional belance is not your other between the promotion of you want to charge this ablocation, please call outstoner general 1-1664-853-7864.

7. WHEN PERIODIC FINANCE CHARGES BEGIN TO ACCRUE. Purchases and Cash Advances begin to secure periodic Finance Charges into the secure periodic Finance Charges and the secure finance Charges for the death of the Interestion (or, at our open, from the data they emposed to your Account) and confinue to incrue Finance Charges until the charge is paid in full charent; you can avoid periodic Finance Charges on new Purchases in the Current Sting Period I for each fulling period you pay your him Basimon, including any Cash Advance belance and any belance of Purchasea media including any Cash Advance belance and any belance of Purchasea media.

under any Special Paymant Plan, in till on or beton the Paymant Dup Date for such bling period. There is no period within which you can eveid periodic Flumps Changes on Cash Advances or Transaction Fees for Cash Advances.

PAYMENTS.

A. You must pay at least the Marimum Paymont on your Statement by the Paymont Dub Cates shown on the Scalement the Imply pay more than the Araphane Paymont at early first. Any strate the Araphane States to your the Marimum Paymont intitally will be 0) the Account is \$250 ft, or 39t, of your New Basince (excluding any batteries to the first and include the paymont of the first and include the paymont of the first and include the paymont of the first and provide day special frameworks, natural to the next highest dotar, that 0) any paymont does not be present of \$16 or 3.5% of your Ary then the Arth organization your Accounts to present from Arths, your Ary then the Arth organization by any Account and present from Arths, you have been the Arth organization by any Account to greater of \$16 or 3.5% of your Ary then the Arth organization between the paymont of the meant Paymont (excluding any believes actived to greater of \$16 or 3.5% of your Ary the Arths, and any common and highest other, plus (i) any past and smoures, the (ii) any paymont due unique any Spaced Paymont Pay. However, if your paymont from pays 15 of your Mary Bastence seach morn's, that any Laborator days from the Arths, and the paymont of the Arths, and the paymont of the Arths, and the Arths, and

All written communications concerning disputed emounts, irrelating any check or other payment instrument that (i) indicates that the payment constitutes "payment in full" or is tendened as full settisfaction of a disputed ament, or (ii) is tendened with other constitutes or intuitations ("Disputed Payments"), must be realled or delivered to us at the address for hilling inquiries shown on the Statement, not the Paymont Address.

C. Al payments, except Disputed Phymonis, must be mailed or desivered to us at the address chown on your Statement (the Trayment Address). Any payments received either 5000 p.m. on any bustness day, or on any day other time is business day, will be credited on the next continues day. Credit to your Account may be delayed up to the business day. Credit to your Account may be delayed up to the days if payment (a) is net received at the Payment Address. (b) the payment and the U.S., (c) is not occumpanted by the remitment occupen attached to your Statement, (d) contains ment then one coupen attached to your Statement, (d) contains ment then one coupen attached to your Statement, (e) is not received in the remitmatic or remitment or pour formation of any type, it this Creditups, a felicial choict, or correspondence of any type, it this Creditups, a felicial choict, or correspondence of any type, it this Creditups, a felicial choict, or correspondence of the processories are frainfal by any account delayed in a Participating Processories are frainfal by the scattering Processories in the merurer described to sa. Abtrough we post your payments in the merurer described to save on the described payments in your Account are subject to be a payment by the greater or payments by your Account are subject to be a payment by the fraished on which the liam of payment was drawn.

. A Transaction Fee by each Balance Transfer treated as a Purchase that pools to your Account. This fee will be a FINANCE CHARGE equal to 4% of the amount of the Balance Transfer, with a mismum of \$5.

We inserve the right to obtain payment electronically for any check of other insertment that you ben'd to up by theleting an ACH (electronic) death in the emount of your check or instituted to your ecoount. Your check or farm will not be returned to you by our ecoount.

FEES. You agroe to pay the following fees

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A. A Labo A Lab Payment Fee, if we have not received your Ministrum Payment by the Payment Due Oets shown on your Statement. The amount of the Lab Payment Fee will be based on your. The second of the Lab Payment Due Oets. The Lab Payment Fee will be \$15 for a Payment Due Oets. The Lab Payment Fee will be \$15 for a New Belance under \$98.99; \$29 for a New Belance of \$100.00 to New Belance of \$100.00 to \$299.92; and \$35 for a New Belance of \$100.000 or more.

. A Returned Check Fee of \$30 if any check or other instrument sent to us, or any electronic payment authorization you provide us in payment manifor your Account, is not honored upon that presentations, even if the check, instrument or electronic authorization is later horaced.

An Over Limit Fea of \$30 for each billing perfort in which your New Balance as shown on your Statement occasts your Oracl Limit. We may excess an Over Limit Fea even if we authorize for large-state on your Account feat caused you be exceed your Credit Limit or if you exceed your Credit Limit or it you caused your Credit Limit as a result of urpoid. Finance Charges, the billing of defented accuract France Charges or other bors.

A Transaction Fee for each Cash Advance that posts to your Ac-count, including any Belanca Transfer freezed as a Cosh Advance. This fee will be a FINANCE CHARGE occur to 4% of the ornount of the Cash Advance, with a minimum of 5%.

A Returned Loan Chack Fee of \$30 in the event any ConventionCo Check on your Account is not honored by us because (i) the portion of your Check it will aveilable for Conventionce Checks is healthfelm to ofver the amount of the Conventions Check, (ii) you have filed a petition in bankruptcy, (iii) the Conventionce you have filed a petition in bankruptcy, (iii) the Conventionce you have filed a petition in bankruptcy, (iii) the Conventionce you have filed a petition in bankruptcy, (iii) the Conventionce.

F. A Stop Payment Fee of \$30 if we stop payment on any Convenience Check at your request. You may request that we stop payment on a Convenience Check (any before it is regolatised by motifying us in whiting at PO. Stor. \$81429, II Pasor, TX. 1939-1459. After Payment withing at PO. Stor. \$81429, II Pasor, TX. 1939-1459. After Payment within for by carrier us at the stephane number on your Statement. If you call and order a stop payment, we must necesse withen confirmation of the stop payment order than you within fourteen [14] days of the call or the stop payment order and expire. The written stop payment and the stop payment order and expire. The written payee, amount and this of the Convenience Check on which payment is to be stopped, A waition shop payment order with depote so (ii) months after we receive it unless the stop payment order is reserved in writing.

10. SECURITY INTEREST. You grant us a purchase money security hisned in each lean of merchandles purchased on your Account to secure its untraid purchased price until such mentiandes is paid in AL Schely for the sur debermand if he extent of our purchase money security interest in each such item of merchandles, your payments will be sidocated that to France Charges on the Account, and then to pay off each Purchase on the Account in the order in which the Purchase was made of more than one term was purchased on the same day, your payments will be allocated to pay your payments will be allocated to pay the lowest priced lean first). If you made a Purchase pursuant to a credit the lowest priced lean first). If you made a Purchase pursuant to a credit

promotion; the betaince with respect to the promotional Purchess may be shown on Statements during the promotional period and may reliect a different payment aboration method. In no event will we seem a country between in the promotional Purchase for a monary greater then the lowest behance shown on a Statement for more promotional Purchase. We agree that no security sharest is or will be retained or noutring under this Agreement in any real properly which is used or in expected to be used as your dwallar. Should we seld it necessary, you entirelies us to sign and the thending soutements regarding any Verlate purchasped.

If the item of manchandes purchased is a Verticle (training the webicle, parts and accessories) and if you default under this Agreement we may, as permitted by explicable lew, requireses, the Vehicle, and any personal property of your first and early extend to the Vehicle and any personal property of your first returned to the Vehicle that had not explored to our security interest may be hald by us without liability. Unless you make, written formand on us for first personal property with 10 days (or any property less) of representation; you will cone any triple to restain it from its, accept as applicable law otherwise providers. After you reputed the Vehicle, as provided they by spritcable law, and the property resolved tryp the sels, will be explicit by your betience after deducing soperace allowed by law. We will pay you any surplus resulting time a sessio of the reposessed Vehicle, and you will pay us any dedicator, when and se permitted by applicable law.

For some individual Parchasses under your Account, we may require you or machain property/cassely insurance on the Purchase as a condition of grating you cred. You will be informed of any property/cassely insurance requirement at the time you make the Purchasse.

11. SPECIAL PAYMENT PLANS.: From time to ten, you may be ofered special promotenal terms which modify the terms of this Agneement with respect to center Purchases or Cush Advances on your Account (Special Penyment Plans). The provisions of this Agneement exply in any Special Penyment Plans). The provisions of this Agneement counter the Special Penyment Plans. The provisions of this Agneement of the Special Penyment Plans. The provision is the special Penyment Agneement Center to the special Penyment Plans (I) a perfect Penyment Plans (II) the state includes, but is not implied to suppress definance. In the event of transaction the subject to the standard provisions implicate to such terminating between will not be funded us a Special-Penyment Plans (II) each remaining between will not be funded us a Special-Penyment Plans (II) each remaining between Champse counted on this Special Penyment Plans transaction; and (II) Finance Champse counted on this Special Penyment Planseament from the data of purchases; If any, may be acticed to your between the provided bay, charges, and or debts provisions of this Agneement flams Champse for tending for Account, Liness provided by applicable law, we may apply any Terms Champs to any outstanding or future between solyour Account. "We will send to you robos of any Terms Champs as negative by applicable has "Upon any lambation of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you reman obligated to repey the testence of your Account, you

13. DEFAULT. Subject to the imbations of applicable tox, wo may declare you in default if your (i) juit to make at loads that Mahmum Payment when our, (ii) which any other term of the Apparanct (ii) become fire subject of a bankurphy or inschemacy proceeding, or (b), sturply, us with mekaciding, lake, incomplate or, incomed information. After your detaild, or your detail, and subject to the imbations of applicable law, we may, (i) reduce your Cash Limit and/or your Credi Limit (ii) temperate your Account; (ii) penying immediate payment of your entity Account is balance; (iv) temmets any Special Payment Plan and coynert any Jeplance on such Plan to the standard terms and conclore of the Account; (v) bring an extent to accled at amounts overly anythough the subject of the standard terms and conclore of the Account; (v) bring an extent to accled at amounts overly anythough the subject of the subject of the payforthis law, our colection costs, including coult costs and reasonable attributely lasts.

14. LIABILITY FOR UNAUTHORIZED USE. The Card is issued by you by us at your request and you agree in destiny it and any Conyrentings of chocks issued upon your Account upon to destiny it and any Conyrentings of chocks issued upon your Account upon terminant Chacks. They be leake for this unsufference use of the Card or Conventionat Checks and to jumphy molify the if your Card or Conventionat Checks and to jumphy in the if you can't Card or Conventionat Checks and to jumphy in the interest use of your Card or Conventionat Checks and the side of your Card or Conventionate Checks and the side to unauthorized use of your Card or Conventionate Checks and, if you one, you refly us of the last, first, or possible unsufficient use of your Card or Conventionate Checks and, if you one, you refly to unsufficient use of your Card or Conventionate Checks, and that you one, you are not unsufficient use of your card or convenience Checks, and that you will be faith for all see by such a person. To is intrastia that unsufficient will be faith for all see by such a person. To is intrastia that unsufficient will be faith for all see by such a person. To is intrastia that unsufficient will be faith for all see by such a person. To is intrastia that unsufficient will be faith for all see by such a person. To is intrastia that unsufficient you must notify us at 1.888,588,6264.

15. CREDIT REPORTS AND ACCOUNT: INEQRIMATION. You give us perifiscion to request beforeston, and so male; whatever inquires we consider; necessary and appropriate first of the design of the purpose of considering programs reported from consumer reporting agencies) for the purpose of considering your appropriate from consumer reporting agencies) for the purpose of considering your exportation for the Account of the purpose of considering your considering your considering your considering your performance under the Agreement, to communicar reporting information about your both account information; if you believe that the many proposity forces such information; if you believe that we have reported insecuting information and sell us with your believe it is information and sell us with your believe it is fine-currulum information, places include a capy of that includes the innectural information of the consumer apport that includes the innectural information of the consumer reporting agency. If you have a many the consumer credit report, information on your credit record many too submitted to a consumer reporting agency. If you have a many the consumer credit report, information your credit record many too submitted to a consumer reporting agency.

18. USE OF INFORMATION ABOUT YOU AND YOUR ACCOUNT. You authorize and dreet us to funds information about you and your Account to Participating Professionals that account the Creat Card (and that efficies and program sponsors) for use in connection with this Creat Card program, industing to create and update that content mornity, to assist from in busine swing you, and to provide you with spocial promotions. In addition, you expee to the use of information about you and your Account despited in the Privacy Pation. The Privacy Pation is a part of this Agreement and is enclosed or attended from the Privacy Pation in the Privacy Pation in the Privacy Pation in the Privacy Pation in the Privacy Pation is a part of this Agreement and is enclosed or attended from the Privacy Pation is a part of this Agreement and is enclosed or attended from the Privacy Pation is a part of this Agreement and is enclosed or attended from the Privacy Pation in the P

17. TELEPHONE MONITORING. To ensure that you neceive accurate and countries customer service; on cocasion, your cell may be monitored by our employees or egynts and you agrow to any such monitoring.

18. JOINT ACCOUNTS: If this is a joint account, each of you will be jointly and individually responsible for your objectives under this Agreement rodge to so of you will be considered to be made to both of your land live can rely on instructions from one of you, even if we receive inconsistent instructions from one of you, even if we receive inconsistent instructions from the other person.

19. WANFER. We may, in our sole discretion, choose to not exercise any right under this Agreement, including the right to impose the full amount of early design, without weaking after right. Any weaker of a right by use must be in writing and signed by us. Except is we may agree in a styred writing, we will not when early rights if we (ii) except is bean or partial rightment, (ii) except is close or other payment, (ii) except is close or other payment marked payment in his for leadured with other conditions or inflations. (ii) closed the date of any payment due under this Agreement, and/or (ii) melacase any collained or parson responsible for your obligations under this Agreement. release any collabral Agreement

With respect to any artiflusion:

NOTICE: If you or With expect to entitlate, the other party must be notified. You must be easil to GE Consumer Figures, Legist Operation, 777 Long Ridge Road, Sammford, CTT 00902, Nythop can be given after a leasest has been 1950, in which base it can be made in passate in the largest.

Administrator. The person who same the arthretion proceeding must choose an estimation with can be either the Neithnel Arthretion Forum, P.O. Box; 50/191, Minnespolis; MRY 55/405; www.arb-fragm.com (800), 474–2371; or the American Ashtration Association, 335 Medicon Avenue, New York, NY 10017, www.adm.org, (800), 471–47878; The actual antibodor will be selected under the estimated in these, and must be a lawyer with at best ten years of experience.

Applicable Law. These terms throthe Intersials commerce and this arbitration provision is governed by the Federal Application Aq. (9 U.S.C., §§) of seq. (the FAA). Utah have she apoly to the obtaint state have in new and under Section 2 of the FAA in determining the waiting that have in new and under Section 2 of the FAA in determining the waiting the law in the AA, that would toply if the matter lad been brought in court, (2) the stitution provision, and (3) the arbitration and the provision of the matter that been brought in court, (2) the stitution of the section of the count (including without installed in apply if the institution on a class action basis or to make an event to constant or make on a stitution on a class action basis or to make an event to constant or or a class action basis or to make an event to constant or a stitution on a class action basis or to make an event to constant. named party to the arbitration.

Location/Fees: The orbitration will false place in a location reasonably convenient to you, if you ask Us, We will pay at ting, administrating, hearing ander other fees the administration or attractor chappes up to \$2,000. If the cost is higher, you can ask Us to pay more and We will consider your request in good tath, Under at circumstances We will pay attendances We

20. CHANGE OF ADDRESS. You will notify us promptly if you change your address. We may send Statements and other revious to your address in our records with any lang a rescoreble opportunity to update our records with any now reddings for you.

21. ARBITRATION PROVISION: Please red the exhaun provisor can which provides that any past, present or ruture legations of the provides that any past, present or ruture legations of the provides that are past, present of the provides that country and exhaus that require legation to the provides that the provides of your account cand or your red, tronship with us ("claus") will be reserved by shound arbitration it efficies you on we exert to arbitrate.

Right to Reject Arbitration: You may reject this arbitration provision, in which event neither, you nor We will have the right to require arbitration. Rejection will not after any other expect of head fams, to regard the arbitration provision, you must send us a ration within 80 days after you open your Account. The notice must include your remaining and Account number and be maked to P.O. Box 891439, El Peso, T.K.79899-1439, This is the city method you can use to reject the arbitration provision.

As used in this provision: "We, "Ne," and "Our, mean (1) GE Money Bank and all of its perporting parents, substituted, attitutes, producescore, successore, automatic, antipulyees, officers and differents (Condictively, the "Bank"), and Condictively, the "Bank"), and Condictively, and parents, and all of their perportine parents, substitutes, affiliates, presponse, successore; sustitute, applications, and directions.

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Judgment/Appesix. Any count having jutodotion may enter judgment upon
the antifract's award. The enthrounts decision will be fined and throthy
except for. (1) any appeal right under the FAA; and (2) any party may
appeal decisions retainty, to Catma of more than \$100,000 to a thronarthrator panel appointed by the administrator, which will reconsider all over
orgain any expect of the appealed terrent. If you expect, We will consider in
good fath a request that We pay any additional bass of the administrator or
arthrator.

DIPORTIANT LIMITATIONS AND RESTRICTIONS: IF A CLAIM GGES TO ARBITICATION, NEITHER YOU WOR WE WILL HAVE THE RIGHT TO: (1) HAVE A COURT, OR, A JURY DECIDE. THE CLAIM; (2) ENGAGE IN DISCOVERY (I.E., THE RIGHT TO OBTAIN HEROTRATION FROM THE DISCOVERY (I.E., THE RIGHT TO OBTAIN HEROTRATION FROM THE DISCOVERY (I.E., THE RIGHT TO OBTAIN HEROTRATION FROM THE DISCOVERY (I.E., THE RIGHT TO OBTAIN HEROTRATION FROM THE DISCOVERY (I.E., THE RIGHT THAT YOU OR WE COULD IN COURT OR IN ARBITRATION; OR (3) JOINTOR CONBOLIDATE CLAIMS (B) WITH ARBITRATION, OR APPEAL IN COURT OR IN ARBITRATION OR WE WENT TO COURT MAY ALSO HOT BE AVAILABLE IN ARBITRATION ONLY A COURT MAY ALSO HOT BE AVAILABLE IN ARBITRATION ONLY A COURT MAY ALSO HOT BE AVAILABLE IN ARBITRATION ONLY A COURT MAY ALSO HOT BE AVAILABLE IN ARBITRATION PROVISION SHALL BE INVALID, THE WALLO, THE ENTIRE ARBITRATION PROVISION TO BE INVALID, THE PAPT(8) OF THIS ARBITRATION PROVISION TO BE INVALID, THE PAPT(8) OF AUTHORITION PROVISION TO BE INVALID, THE PAPT(8) OF AUTHORITION PROVISION TO BE INVALID, THE PAPT(8) THE ARBITRATION FOR ARBITRATION FOR MATERIAL HIS HAVED TO, ON BEHALF OF OR ARBITRATION.

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This erbitation provision will survive the territration of your Account and the Card and will remain in thron no mailtar what temporas to your or your Account in case of any conflict or inconsistency; this Agreement controls over tany rules and procedures of the arbitation administrator.

22. GOVERNING LAW. Except as provided in the arbitration provision, this Agreement and your Account and any claim, disputs or controversy arising from or relating to this Agreement or your Account, whether besed on contract, both, fraud and other intentional larts, strivits, common law and/or equity, are governed by and construed in accordance with federal law, and to the attent that state law applies, the laws of the State of Ulah (without repard to infarnal principles, of conflicts of law). The togetilly, entercastilly and interpretation of this Agreement end the amounts contracted for, charged and received under this Agreement will be governed by such laws. This Agreement is enthred into between you and us in that. We make decisions about granting credit to you under this Agreement from, and accopt your payments in Uteh.

23. ASSIGNMENT. We may sell, seeign or bransfer any of our rights or obligations under this Agreement or your Account, including our rights to payments, without prior police to you. You may not sell, easign or transfer any of your rights or obligations under this Agreement or your Account.

 SEVERABILITY. If any provision of this Agreement is determined to void or unexistorceable under applicable law, all other provisions of this shall will be valid and enforceable.

25. ENTIRE AGREEMENT. This Agreement, together with any application you signed or otherwise submitted in convection with the Account (which is hereby incorporated by reference in this Agreement), constitutes the entire agreement between you and us relating to your Account and superscale any other prior or contemporations agreement between you and us relating to your Account. This Agreement may not be enranded oncept in econference with the provisions of this Agreement. It is not the heatest that engages that engages in account and agreement is fixed rush in the agreement of late or charge in account into Agreement in fixed the engages that engages in account on the parties that engages in the agreement is fixed to explicable the or charge satessed undur this Agreement is fixed or dear-intended to be in excess of that permitted by applicable two, the access armount with be uncounted to solute the outstanding between the roo outstanding between will be refunded to you.

FEDERAL AND STATE NOTICES

NEW JERBEY RESIDENTS: Bossues certain provisions of the Agreement are subject to spollcable levin, they may be vold, unenforcesble or happlicable in sums jurisdictions. Note of these provisions, nowover, je vold, unenforcesble or inapplicable in New Jersey.

PUERTO RICO RESIDENTS: You may request a copy of this Agreement

Mark Stayes

Mark D. Hayes
Vice President Marketing
GE Money Bank
4248 South Reverboat Rd., Suite 200
Salt Lake City, UT. 84123-2551

YOUR BILLING RIGHTS NOTICE FOR FUTURE USE

This nodes contains important information about your rights and our responsible tos under the Fetr Crost Billing Act.

your lotter, give us the following information:

Your eignature on the application or soins allo for the initial Purchase approved on the Account represents your eignature on this Agreement and is incorporated by reference.

Notice: The lobowing is important information regarding your right to dispute billing errors.

Notify Us in Case of Errors or Questions About Your Bill you think your bills wrong or if you need once information about a transaction on your bill write up on a separate, sheet ut the existics shown on your summer under billing hypides. While he we see you no possible, We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your or problem appeared. You can telephone us, but doing so will not preserve your or problem appeared.

Your name and Account maniber.
The obtain onput of the suspected error.
Describe the error and explain, if you can, why you believe there is an error. If you need more information, disorbe the team you are not sure about.

After we receive your letter, we cannot try to collect any amount you quarton, or report you as delinquent: We can continue to bill you for the amount; you question, including finance charges, and we can expri you questioned amount epithet your credit limb. You do not have to pay any pay the parts of your title we are tweetigating-but you are set obligated to pay the parts of your bill that ure not in question.

Your Rights and Our Responsibilities After We Receive Your Written Norther New Martin Schrowledge your letter within 30 days, unless we have car-noted the error by then. Within 80 days, we must either carried the error or explain, why we betwee the bit was correct.

If we find that we make a mission on your bill, you will not have be pay any impacts, a charges mission to any questioned expount. If you district make a mission, you may have to pay furence draight, and you will have burned up now missed payment on the questioned mount. In effort case, we will be pay the smouth of the surrount you operand the date that if you stall to pay the smouth that we think you operand the date that if you stall to pay the amount of the surrount you operand mount and the first you are the will be amount of the surrount you operand mount you but and you with the first you make a question bout you fur And, we must be anyone we are you to that you have a question bout you fur And, we must sell you to that the make he you to the first the first you a mount you but the first you have a mount you but the first you have a mount of the first your these, we can't collect the first \$60 of the questioned immount, over it is weat oursely.

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(a) You must have made the purchase in your home water or, it not within your home state, within 100 miles of your current mailing address; and

(b) The purchase price must have been more than \$50.

These similations do not apply if we gain or operate the merchant, or if we mailed you the advertisement for the property or services.

PRIVACY POLICY

This Phikeay Poday describes our information collection and sharing practices. Please need it countilly and relativish your records for this Account. This Poday adulties only to current and former customers and applicants in their relativishing with us relating to this companier could Account of GE. Money, Bank ("GEMB," ""res", "Jus" or "our"), In: this policy, the form Provider refers to both CareCredt LLC and each perticipating professional trust accounts the CareCredt LLC and each perticipating professional trust accounts the CareCredt LC and each perticipating professional trust accounts the CareCredt Card.

Information Wit Collect.—We collect personally identifiable information about you (such as your extress, phone; number, codel: social; runtier, mother's insuber harne and branspion; information about thems purchased, payments and payment instruct, for theritization, account information should you death as on a production from your (such as on application forms); firestly your use of our products and services; and in same cases; church that parties (such as onest) burseaus and compressive firms). Occasionally, we may use ocaled information about your ordine using "cooless" (sine) pieces of data stoned by your information passwords for you, to track, your website usage with us, and to provide passwords for you, to track, your website usage with us, and to provide you with customated content, among other things:

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Important Notice
Regarding Your OB Money Bank Credit Card Account
March 2009

Mease read this Notice carefully and retain a for jour records.

This Notice changes the following serins of your GE Money Benk Cred's Card Agree ment governing the Accounts referend to in the executed Statement. The changes will be effective on the first day of your Agril 2009 biring cycle. All other terms of your Agril 2009 biring cycle. All other terms of your Agril 2008 as the in and.

- Late Payment For. The late Fayment For will becrouse from \$29 to \$29.99 for a habote of \$249.99 or less and from \$39 to \$19.99 for a behaver of \$350.00 or more.
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STATE OF:

Minnesota

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COUNTY OF:

Ramsey

BEFORE ME, on the day and date set forth below, the undersigned Notary, being qualified and commissioned in and for the county and state aforesaid, personally came and appeared Karl Drenth, who being duly sworn, did depose and say:

Affiant is the DOCUMENT CONTROL SPECIALIST at GE MONEY BANK and in that capacity, Affiant is personally familiar with the debt 6019183001652676 (the "Account") made by SANDRA SAILSMAN (the "Debtor") made payable to GE MONEY BANK and subsequently sold to CACH, LLC.

The correct amount currently owed by the Debtor on Account Number is the sum of \$13,916.47 as 8/24/2009 and is reflected in all records of the account of which GE MONEY BANK has knowledge.

The following statement pertains if the debtor referenced above is a state of California resident: I certify under the penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 5 day of 1004 2010

Karl Drenth
Document Control Specialist

Sworn to and Subscribed before me this ___

day of

2010

Notary Public

My commission expires:

315



CERTIFICATE OF CONFORMITY

I, <u>BRETT WILLIAM ROULEAU</u>, (an attorney-at-law admitted to practice in the State of <u>MINNESOTA</u>) and fully acquainted with the laws of the State of <u>MINNESOTA</u> pertaining to the acknowledgement or proof of deeds of real property to be recorded therein, do hereby certify that I am duly qualified to make this Certificate Of Conformity pursuant to Section 299-a of the Real Property Law of the State of New York and hereby certify that the acknowledgement or proof upon the foregoing document was taken by <u>MAGGIE HOUSKER</u>, a Notary Public in the State of <u>MINNESOTA</u>, in the manner prescribed by the laws of the State of <u>MINNESOTA</u> and conforms to the laws thereof in all respects.

IN WITNESS WHEREOF, I have hereunto set my signature, on MAY 5 2010.

Attorney at Law, State of MINNESOTA

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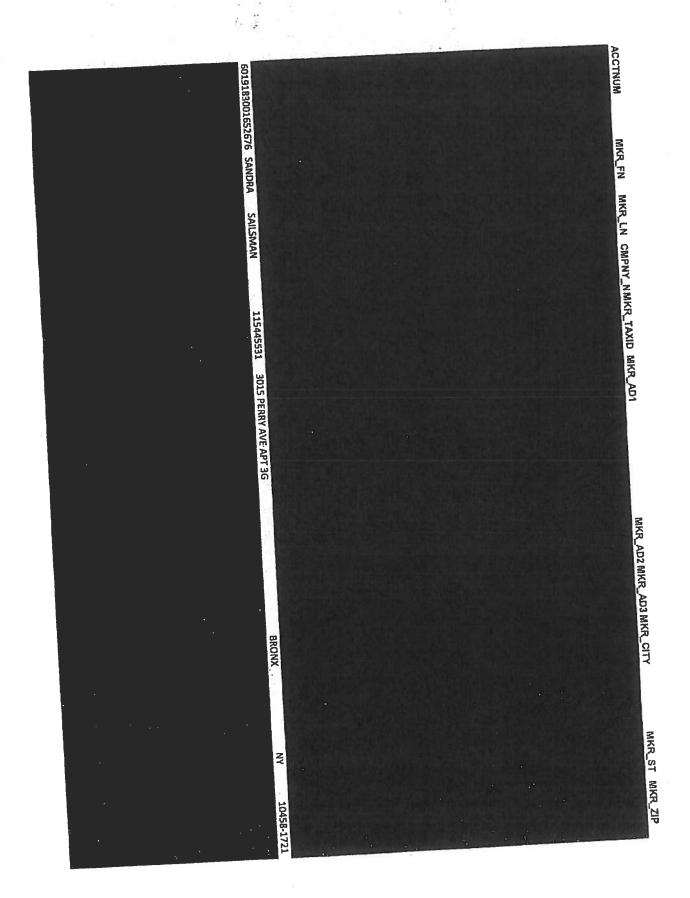
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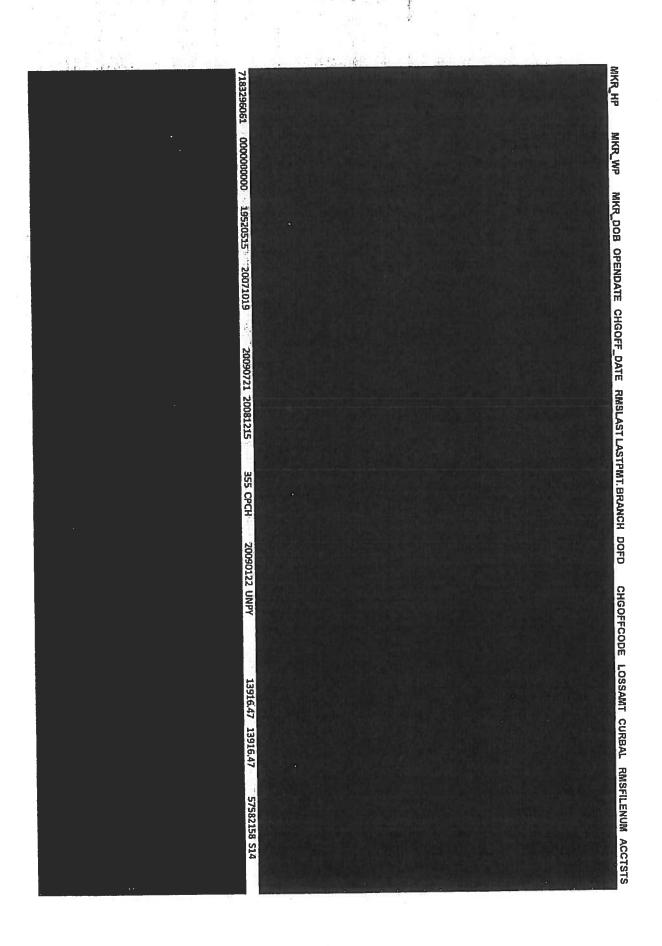
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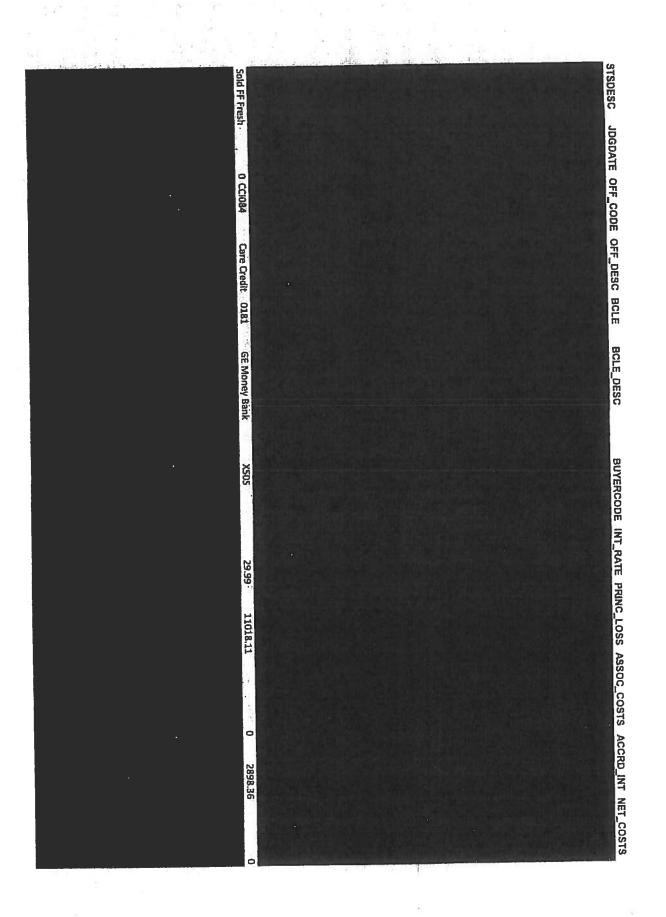
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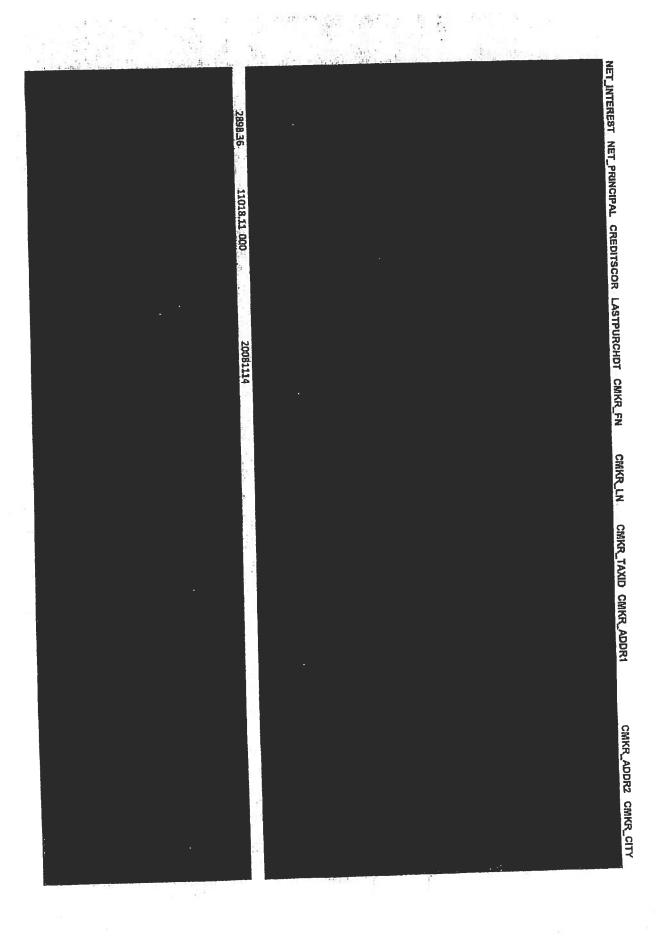
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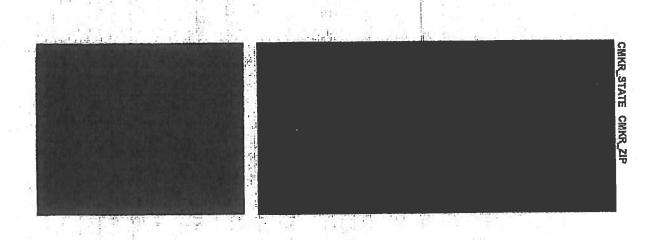
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AFFIDAVIT OF SERVICE

STATE OF NEW YORK

SS.:

COUNTY OF NASSAU)

Michelle Farino, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in the County of Queens, State of New York.

I served a copy of the within Notice of Motion to Grant Summary Judgment in favor of Plaintiff, Affirmation in Support, Affidavit in Support and annexed Exhibits on the following:

SANDRA SAILSMAN 3015 Perry Ave 3g Bronx, NY 10458

Michelle Farino

Sworn to before me this

Ira R. Sitzei

Notary Public-State of New York

day of May, 2011

No. 01SI45\19\18

Qualified in Suffolk County

Commission Expires Dec. 31, 2014

EXHIBIT I

| CIVIL COURT OF THE CITY COUNTY OF BRONX | OF NEW YORK | |
|--|-------------|------------------------------|
| CACH, LLC | Plaintiff, | ORDER Index No.: 02235/11 |
| -against- | | April 35 C |
| SANDRA SAILSMAN | Defendant. | (01, 11) |
| | 4 | |

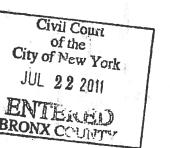
The Plaintiff, having moved pursuant to CPLR § 3212 for an Order granting Summary Judgment in its favor and against the Defendant and said motion having been submitted on July 22, 2011, on default

UPON the Summons and Verified Complaint, Answer, Notice of Motion to Grant Summary Judgment, affidavit of Plaintiff, affirmation in support and exhibits annexed thereto, and upon all prior proceedings had herein, and due deliberation having been had thereon;

NOW, upon motion of Daniels & Norelli, P.C., attorneys for Plaintiff, it is hereby ORDERED that Plaintiff's motion is granted in its entirety; and it is further

ORDERED that the clerk is hereby directed to enter judgment in favor of Plaintiff and against the Defendant in the sum of \$1,916.47 together with statutory interest at the rate of 9.0% from 7/21/2009 plus costs and disbursements, and that judgment be entered accordingly.

Dated : 7/22/11



HON. LIZBETH GONZÁLEZ JUDGE, CIVIL COURT

EXHIBIT J

| | OUNTY OF BRON | | EW YURK | -X | | |
|--------|--|------------------------------------|--|----------------------------|-----------------------------|-------------------------|
| | CACH | 1, LLC | | | | |
| | | Plaintiff, | | | Index No. | CV-0022 |
| | - agains | et - | | | | |
| | SMDPH | 4 SALLS! | MAN | | | |
| | - | Defendant | * ************************************ | X | | |
| | | DANT'S RESP FF'S MOTION | | | | |
| Sta | te of New York, C | ounty of Bronx | | | | |
| | SANDRA SALL | SMAN | _, being d | uly sworn, | deposes and | says: |
| • | I am the Defendan | t in this proceed | ing. | | | |
| • @ | I make this Affida judgment. | vit in opposition | to Plaintif | f's motion | for summary | |
| | The court should of following reasons: | | notion for | summary jı | adgment for t | he |
| 9/ | Plaintiff has not est | ablished that it h | nas standin | g to bring t | his claim. | |
| | neglected to o | fer a copy of suntly, must be pro | ich agreen duced in o | nent. An a order to pro | ssignment is ve its content | a contract |
| | THE AUTHOR AND DUES TO THE S | BILL OF MICHTY OF NOT WINK I | - THE DEFENDA | DOCUME NTS ALL | LEGIBLE EAED DE | E AND SUSPECT; BT |
| | 8 | <u> </u> | S TOP ST | . 4 17 | | 1 |
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| The issue of standing can be characterized as raising questions of subject matter jurisdiction, Lacks v. Lacks, 41 N.Y.2d 71, 74 (1976), which is a defense not waived by Defendant, see N.Y. C.P.L.R. § 3211(2). See Security Pacific Nat'l Bank v. Evans, 31 A.D.3d 278 (1st Dep't 2006) (stating that the doctrine of standing is an element of the larger question of justiciability and is designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome so as to present the court with a dispute that is capable of judicial resolution). |
|--|
| The affidavit/s submitted by Plaintiff to introduce the evidence in support of its claim is/are inadmissible hearsay. |
| The documentation provided does not meet the business records exception to the hearsay rule and they are not authenticated by an affidavit from the appropriate party. The court should not consider them, and summary judgment should be denied. |
| Pursuant to N.Y. C.P.L.R. § 4518(a) a sponsoring witness must 1) provide that the record was made in the regular course of business; 2) it was the regular course of business to make it; and 3) it was made contemporaneously with the events it records. The mere recitation of this standard does not render the documents Plaintiff seeks to admit as sufficient under the business records exception to the hearsay rule. |
| ALL STATEMENTS MADE BY ME TON VI (TIL ARE BASED UPON INFORMATION) AND POLICIMENTS PROVIDED 134 GE MONEY BANK THUS MR VIGIL COULD NOT HOWE PRESONAL KNOWLEDGE OF THE EINFORMATION IN THE DOCUMENTS. MOREOVER, THE CERTIFICATE OF CONFORMITY INTODUCING MOREOVER, THE CERTIFICATE OF CONFORMITY INTODUCING |
| CACHLLC V BETH FRANK, CV-073388-10/BX. |

| int N. | The fact that Plaintiff obtained the records from Cot Mowey BANG department of them is insignificant and an insufficient basis for the roduction into evidence. Palisades Collection, LLC v. Gonzalez, 809 Y.S.2d 482, 2005 WL 3372971 *2 (N.Y. Civ. Ct. 2005). See also N.Y. P.L.R. § 3212(b). |
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| im tha | ff has failed to set forth admissible evidence establishing a <u>prima facie</u> at entitles it to collect on the alleged debt owed by Defendant. Even assuming Plaintiff's proffered evidence meets threshold |
| of | quirements for admissibility, Plaintiff has not provided sufficient vidence supporting its apparent claims for Account Stated and/or Breach Contract. See Citibank v. Martin, 807 N.Y.S.2d 284 (N.Y. Civ. Ct. 2005). |
| of 20 re pl co | ridence supporting its apparent claims for Account Stated and/or Breach Contract. See Citibank v. Martin, 807 N.Y.S.2d 284 (N.Y. Civ. Ct. |

| Plaintiff must prove for its account stated claim that 1) the account was presented; 2) by mutual agreement it was accepted as correct; and 3) the debtor promised to pay the account stated. Bank of New York-Delaware v. Santarelli, 491 N.Y.S.2d 980, 981 (Civ. Ct. Greene Co. 1985). New York courts treat the account stated claim as an accounting requiring an independent basis for liability and as merely establishing the amount of debt. Citibank v. Martin, 807 N.Y.S. at 291. An account stated claim can determine only the amount of debt it cannot create liability where none exists "as well as prove any agreement to pay any interest appearing on the account." Id. (emphasis added). More importantly, New York law states in reference to the unauthorized or improper use of credit and debit cards that: "No agreement between the issuer and holder shall contain any provision that a statement sent by the issuer to the holder shall be deemed correct unless objected to within a specified period of time. Any such provision is against public policy and shall be of no force or effect." N.Y Gen. Bus. Law § 517 (2011). | |
|---|--|
| presented; 2) by mutual agreement it was accepted as correct; and 3) the debtor promised to pay the account stated. Bank of New York-Delaware v Santarelli, 491 N.Y.S.2d 980, 981 (Civ. Ct. Greene Co. 1985). New York courts treat the account stated claim as an accounting requiring ar independent basis for liability and as merely establishing the amount of debt. Citibank v. Martin, 807 N.Y.S. at 291. An account stated claim car determine only the amount of debt it cannot create liability where none exists "as well as prove any agreement to pay any interest appearing on the account." Id. (emphasis added). More importantly, New York law states in reference to the unauthorized or improper use of credit and debit cards that: "No agreement between the issuer and holder shall contain any provision that a statement sent by the issuer to the holder shall be deemed correct unless objected to within a specified period of time. Any sucle provision is against public policy and shall be of no force or effect." N.Y | |
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Genuine triable issues of material fact exist that cannot be resolved at summary judgment. N.Y. C.P.L.R. § 3212(b). "[T]he remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable, since it serves to deprive a party of his [or her] day in court. Relief should be granted only where no genuine, triable issue of fact exists." Chemical Bank v. West 95th St. Dev. Corp., 161 A.D.2d 218, 219 (1st Dep't 1990).

| DEFENDANT MAINTAINS | THAT SHE HAT |
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| CONTRIATE CONTROL PS | ET THAT DO NOT |
| COMPSIPAND DO THES IN DOCUMENTS CONTROLLES E | THE STATEMENT S. THESE ACH OTHER. |
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| Last, in addition to the aforementioned redenied because The Certhicare of Confirmity of | 2 2 |
| Brett William Rouleau Introdu of Sale doted may 5, 2010, Se | e Pts Ex. E, relates to |
| property to be rewald the sein | account the |
| Certificate log conformity of | s insufficient on 113 |
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4. The following cases support my position: J.P. Morgan Chase Bank, N.A. v. Rabel, 27 Misc.3d 656 (N.Y. Civ. Ct. 2010); J&L Am. Enters., Ltd. v. DSA Direct, LLC, 814 N.Y.S. 2d 890, 890 (Sup. Ct. N.Y. Co. 2006); MBNA America Bank, N.A. v. Nelson, 2007 NY Slip Op 51200U, 24 (Civ. Ct Richmond Co. 2007); Kent v. 534 E. 11th St., 80 A.D.3d 106 (1st Dep't 2010) (stating that even when existence of agreement is undisputed, the court must be able to determine what terms of the agreement are before it can conclude there has been a breach); Palisades Collection Co. v. Velasquez, 910 N.Y.S.2d 406 (1st Dep't 2010); Palisades Collection, LLC v. Gonzalez, 809 N.Y.S.2d 482, 482 (Civ. Ct. N.Y. County 2005); Chemical Bank v. West 95th St. Dev. Corp., 161 A.D.2d 218 (1st Dep't 1990).

I swear upon penalty of perjury that the statements made above are true to the best of my knowledge, information, and belief.

WHEREFORE, I respectfully request that Plaintiff's motion for summary

judgment be denied.

Sworn to before me this

JASON VANCE
NOTARY PUBLIC, State of New York
No. 04VA6161023
Qualified in Bronx County
Commission Expires Feb. 8,20

EXHIBIT K

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX - PART 35C

Present:

Honorable Ben R. Barbato, A.J.S.C.

CACH, LLC,

DECISION/ORDER

Plaintiff,

Index No.: 2235/11

-against-

SANDRA SAILSMAN,

Defendant.

The following papers numbered 1 to 5 read on this motion for summary judgment noticed and submitted on the Part 35C Motion Calendar of August 26, 2011.

| Papers Submitted | Numbered |
|--|----------|
| Notice of Motion, Affirmation and Exhibits | 1, 2, 3 |
| Affidavit in Opposition | 4 |
| Reply Affirmation | 5 |

Upon the foregoing cited papers, Plaintiff CACH, LLC moves for an Order pursuant to CPLR §3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant SANDRA SAILSMAN.

This action is a breach of contract action brought by the Plaintiff on January 7, 2011. Plaintiff alleges that Defendant opened and maintained a credit card account with Plaintiff's predecessor, that monthly statements were mailed to the Defendant, that Defendant failed to make the required payments and that there is a balance due and owing to Plaintiff, now the current owner. Plaintiff argues that it is entitled to summary judgment against Defendant in the amount of \$1,916.47, together with statutory interest from July 21, 2009 and costs of this action under the doctrine of account stated.

In opposition, the Defendant alleges that Plaintiff has not established that it has standing to bring this claim, that the affidavit submitted by the Plaintiff is inadmissible hearsay and that it

has failed to prove a *prima facie* claim that entitles it to collect on the alleged debt owed by Defendant. In addition, Defendant argues that it has paid in full over \$14,000 and that she has provided Plaintiff with documentation proving that payments were made. Defendant also states that the contract contains fees that do not correspond to fees in the statements, that these documents contradict each other.

"[T]he remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable, since it serves to deprive a party of his [or her] day in court. Relief should be granted only where no genuine, triable issue of fact exists." *Chemical Bank v. West 95th St. Dev. Corp.*, 161 A.D.2d 218 (1st Dept. 1990). With respect to an account stated, the mere rendering of an account does not make it a stated one, but where an account is rendered showing a balance, the party receiving it must, within a reasonable time, examine it and object, if he disputes its correctness. See *Peterson v. IBJ Schroder Bank & Trust Co.*, 172 A.D.2d 165 (1st Dept. 1991). If he omits to do so, he will be deemed by his silence to have acquiesced, and will be bound by it as an account stated, unless fraud, mistake or other equitable considerations are shown. Whether the parties' conduct evinces a mutual intent to be bound by a purported agreement and whether in an action based on an alleged account stated, objection is made within a reasonable time after receipt of the account are questions of fact that need to be submitted to the jury. See *Bowne of New York, Inc. v. International 800 Telecom Corp.*, 178 A.D.2d 138 (1st Dept. 1991).

Courts have indicated that absent fraud, mistake, or other invalidating causes or equitable considerations that would make recognition and enforcement of the agreement inappropriate, an account stated, having been agreed to by both the debtor and the creditor, is to be treated as

conclusive. See 29 Williston on Contracts § 73:61 (4th ed.) Nevertheless, an account stated is open to attack on those bases available for challenging many other contracts. Thus, it may generally be shown that the parties never agreed to an account stated; or that if the account was in fact agreed upon or "stated" it was nevertheless not intended to include the particular claim as to which a question has now arisen; or that the account stated was induced by fraud; or that it was entered into as a result of the kind of a material mistake that will give rise to relief in equity. (*Id.*)

The Court has reviewed the file and all evidence submitted. Based upon that review, the Court finds that the strict standards for the granting of summary motion have not been met and that the Defendant is entitled to her day in court. The Court notes that this action is on the trial calendar for September 22, 2011.

Accordingly it is

ORDERED, that Plaintiff CACH, LLC's motion for an Order pursuant to CPLR §3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant SANDRA SAILSMAN is **Denied**.

The above constitutes the Decision and Order of this Court.

Dated: August 30, 2011

Civil Court
of the
City of New York
SEP 16 2011

ENTERED BRONX COUNTY

Hon. Ben R. Barbato, A.J.S.C